`SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10776-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KIRAN NAHAR First Respondent

and

FARHAT MALIK-MASUD Second Respondent

Before:

Mr D. Potts (in the chair)
Mrs E. Stanley
Mr P. Wyatt

Date of Hearing: 3rd, 4th and 5th October 2012

Appearances

Tim Dutton QC of Fountain Court Chambers, Temple, London EC4Y 9DH instructed by Morgan Cole LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant

The First Respondent appeared and represented herself

Alexis Hearnden, Counsel of 39 Essex Street, London WC2R 3AT instructed by RadcliffesLeBrasseur, 5 Great College Street, London SW1P 3SJ for the Second Respondent who was present on the morning of 3 October and the afternoon of 5 October.

JUDGMENT

Allegations

1. The allegations against the First Respondent, Kiran Nahar and the Second Respondent, Farhat Malik-Masud as amended in respect of the Second Respondent with the approval of the Tribunal as recorded under "Preliminary issues" below, were as follows:

First Respondent

1.1 She conducted herself in a manner which was likely to compromise her integrity and/or independence, contrary to Rules 1.02 and/or 1.03 of the Solicitors Code of Conduct 2007.

1.2 She failed to act in the best interests of clients, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 and/or in a way that was likely to diminish the trust the public placed in her and the legal profession, contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.

1.3 She failed to maintain proper books of accounts, contrary to Rule 32 of the Solicitors Accounts Rules 1998.

1.4 She paid, or permitted payment, into office account [of] monies which should have been paid into client account in breach of Rule 15 of the Solicitors Accounts Rules 1998.

1.5 She paid directly into office account monies received from clients which the Respondents described as "agreed fees" when in fact they were not so, contrary to Rule 19 of the Solicitors Accounts Rules 1998.

1.6 She failed to fulfil her responsibilities with regard to the management of Norman Saville and Co and/or the supervision of work undertaken, contrary to Rule 5 of the Solicitors Code of Conduct 2007.

1.7 She entered into agreements with Introducers and, in doing so, has failed to comply with the requirements of Rule 9.02 of the Solicitors Code of Conduct 2007.

1.8 She failed to co-operate with the Solicitors Regulation Authority, contrary to Rule 20.05 of the Solicitors Code of Conduct 2007.

1.9 She allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the activities of Norman Saville and Co.

1.10 She acted recklessly.

1.11 She provided misleading and false statements to the Solicitors Regulation Authority and, in doing so, acted dishonestly.

Second Respondent

2.1 She conducted herself in a manner which was likely to compromise her independence, contrary to Rules 1.02 and/or 1.03 of the Solicitors Code of Conduct 2007.

2.2 She failed to act in the best interests of clients, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 and/or in a way that was likely to diminish the trust the public placed in her and the legal profession, contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.

2.3 She failed to maintain proper books of accounts, contrary to Rule 32 of the Solicitors Accounts Rules 1998.

2.4 She paid, or permitted payment, into office account monies which should have been paid into client account in breach of Rule 15 of the Solicitors Accounts Rules 1998.

2.5 She paid directly into office account monies received from clients which the Respondents described as "agreed fees" when in fact they were not so, contrary to Rule 19 of the Solicitors Accounts Rules 1998.

2.6 She failed to fulfil her responsibilities with regard to the management of Norman Saville and Co and/or the supervision of work undertaken contrary to Rule 5 of the Solicitors Code of Conduct 2007.

2.7 Withdrawn

2.8 Withdrawn

2.9 She allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the activities of Norman Saville and Co.

2.10 Withdrawn

Documents

3. The Tribunal reviewed all the documents, including:

Applicant:

- Rule 5 Statement dated 8 July 2011 with Applicant's bundle of documents as listed;
- Supplementary bundle of documents as listed;
- Letter dated 24 September 2012 from Morgan Cole LLP Solicitors to the Tribunal;
- Outline opening submissions on behalf of the Applicant by Tim Dutton QC dated 1 October 2012;
- Witness statement of Alice Evans with exhibit dated 4 October 2012;

- Extract from the Solicitors Code of Conduct 2007 Rule 9.02 Financial arrangements with introducers;
- Schedule of costs.

First Respondent:

- Witness statement of the First Respondent dated 2 October 2012;
- Document entitled "Information of interest to the Applicant";
- Bundle of testimonials.

Second Respondent:

- Second witness statement of the Second Respondent dated 5 October 2012;
- Submissions on behalf of the Second Respondent by Alexis Hearnden of Counsel dated 2 October 2012;
- Witness statement of Khawas Masud dated 24 September 2012;
- Authorities bundle as indexed;
- Bundle of testimonials;
- Financial information relating to the Second Respondent.

Preliminary issues

4. Following discussions between the representatives of the Applicant and the Second Respondent before the hearing, Mr Dutton informed the Tribunal, that the Second Respondent proposed to admit allegations 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 2.9. Her admission in respect of allegation 2.1 was limited to breach of Rule 1.03 of the Solicitors Code of Conduct 2007 relating to compromising her independence. The Applicant had considered those admissions in the context of its view of the culpability of both Respondents and the fact that the Second Respondent became a partner in the firm after 29 March 2010 when its acquisition through the First Respondent and her associates had (allegedly) occurred. The Applicant considered that the admissions made by the Second Respondent met the public interest regarding this case and its seriousness. The Applicant proposed that the other allegations made against the Second Respondent, that was the remaining part of allegation 2.1 and allegations 2.7, 2.8 and 2.10 should lie on the file, not to be proceeded with without the permission of the Tribunal and should be dismissed within 14 days after the conclusion of the pending case against a firm W. Mr Dutton submitted that this would bring finality for the Second Respondent, but should ensure that if anything presently unknown regarding the Second Respondent unexpectedly emerged, the public could be protected.

5. Mr Dutton also informed the Tribunal that the First Respondent wished to make an application for disclosure against the Applicant and if that application were successful, the Tribunal would need to adjourn the case generally. If it were unsuccessful, then he proposed that the Tribunal should continue with the hearing against the First Respondent, but that if the Applicant's proposals regarding the

allegations against the Second Respondent were approved by the Tribunal, the Second Respondent should be allowed to absent herself from the hearing. Her Counsel, Ms Hearnden would attend the hearing to protect her position and the Second Respondent would return to the Tribunal at the appropriate time for consideration of mitigation and sanction in respect of her admissions. The Tribunal advised Ms Hearnden that the Second Respondent's attendance was a matter for the Second Respondent to determine.

6. Prior to the hearing, the First Respondent had made an application for disclosure of the hard drives which the Applicant had taken from the computers at Norman Saville and Co on the day that the practice was intervened into, and for an adjournment of the substantive hearing. These applications had been opposed by the Applicant and refused by the Chairman on the papers on 20 September 2012, on the grounds that they were late and lacked particularity. The Chairman also directed that if the First Respondent renewed her applications at the substantive hearing they must be raised as a preliminary point and supported by a witness statement setting out with precision the documents or categories of documents, disclosure of which she relied on and why they were relevant to her case. Any witness statement was to be sent to the Tribunal's office and served on the Applicant not less than seven days before the final hearing.

7. On 3 October 2012 before the commencement of the hearing, the First Respondent had handed in a document "Witness Statement of Kiran Nahar", beginning:

> "I Kiran Nahar would like to say the following with regards to disclosure:
>
> Below is a series of e-mails which demonstrate the various requests I have made for disclosure, I have tried to put these into date order for ease of reference for the Tribunal."

The remainder of the statement consisted of quotations from e-mails commencing on 26 March 2012 timed at 11.25 from the First Respondent to Mr Havard and concluding with an e-mail from the First Respondent to the Tribunal dated 24 September 2012 timed at 16.39.

8. In support of her application, the First Respondent submitted that she had provided communications from 26 March 2012 with Mr Havard when she had put him on notice that she wanted around 36 hard drives. She stated that she had chased Mr Havard on numerous occasions. On 8 June 2012, she had identified that she wanted the hard drives of ZH, JA, AK and GS. She accepted that she had revised that list slightly and asked for the hard drive belonging to Mr Ennos ("NE"), who was to be a witness in these proceedings, in place of that of AK. She submitted that there was information on the hard drives, which would assist her in preparing her defence. The individuals were senior staff members who had been liaising with her day-to-day about the running of the practice. Allegations 1.6 and 1.9 related respectively to her management and supervision of the office and the influence of others over the practice, so she wanted information regarding the management of the office which she submitted would prove that the third parties had had no day-to-day influence over her in that management. The First Respondent was also seeking information from the hard drives about professional legal advice that she received about outsourcing agreements with an entity JM Ltd ("J") which were the subject of allegation 1.7. In her e-mail dated 17 September 2012 timed at 15.20, she had requested disclosure of

information contained on the hard drives of JA, GS and NE and also the hard drive that she was using and explained that she relied on the advice and guidance of a solicitor, G but made no mention of communications with senior members of staff. In respect of that omission, the First Respondent stated that by this time, after chasing Mr Havard since March 2012, she was under a lot of pressure and trying to be cooperative. She was sure that she had mentioned afterwards that she wanted those communications. She had been trying to clarify in her mind what information would be on the hard drives. In respect of the fact that she had a right to obtain papers from G as he had been her solicitor, the First Respondent submitted that she had not approached him because they had parted on bad terms. She was not happy with the advice which he had given her. She found it difficult to communicate with him and had not done so since they became on bad terms. The First Respondent confirmed to the Tribunal that she was abandoning the legal professional privilege which she had originally claimed against the Applicant regarding the advice given to her by G.

9. For the Applicant, Mr Dutton submitted that the Applicant had been under the impression, as evidenced by Mr Havard's letter to the Tribunal of 20 September 2012, that the First Respondent was requesting information contained on the hard drives of JA, GS, and NE as well as her own. He stated that this differed from the request in her e-mail of 8 June 2012. In his letter of 20 September 2012, Mr Havard had also pointed out that the First Respondent had indicated that she wished to have sight of communications between her, the individuals referred to, and G. However, she had not set out what steps if any, she as his client had taken, to obtain copies of these communications from G directly. Mr Dutton submitted that it was unrealistic to suppose that the Applicant could search through the discs derived from the 36 hard drives to find advice from G. There would be a great deal of information on the discs. They were in third-party storage. He submitted that the position in respect of G was compounded because during the course of the enquiry and intervention, the First Respondent had claimed legal professional privilege over any communications between her and G as she was entitled to do. That privilege was absolute. Mr Dutton referred the Tribunal to G's letter dated 21 June 2010 to Mr Cotter who was to be a witness for the Applicant, Mr Cotter asked for:

> "Details of the nature and source of any advice that you have had regarding the content of any websites used to provide clients to the firm and copies of the advice."

G had replied claiming privilege:

> "As you are aware, the advice is subject to legal professional privilege which my clients do not wave. Tab 5 contains a copy of the decision of B and Ors. v Auckland Law Society and Another [2003] UKPC 38 and a copy of a page from the fifth edition of Harris on Disciplinary and Regulatory Proceedings which summarises the position for you."

10. Mr Dutton explained that he had acted in proceedings relating to the intervention in 2010, and because privilege had been claimed in respect of the legal advice given by G, special steps had been taken with independent counsel instructed so that the Applicant did not see any privileged legal advice from the First Respondent's former solicitors. The First Respondent had been a party to those proceedings and was

familiar with the steps which had been taken and so Mr Dutton submitted that it was ironic that she now sought disclosure from the discs of advice allegedly given by G. If there was relevant information, the First Respondent had had the opportunity at least since March 2012 and even previously, to set out what documents she was looking for, so that some kind of rational and proportionate search could be undertaken. It was too late to do that now. In any event the information that she sought was unlikely to assist her as the Applicant did not allege that the firm was run for the benefit of these staff members. The Applicant's case was that two individuals WS and MC were guiding forces behind the firm and that the First Respondent let herself be a front for those individuals. The statement of NE showed that he had been concerned about the influence of WS and MC and he could be questioned in evidence. The First Respondent had not provided any information about attempts to contact the other individuals, which Mr Dutton submitted would have been an economic and proper way to investigate the issue. Instead, she had made an application for the Applicant to conduct a huge search in the hope that something might turn up. Mr Dutton submitted that her application was too late and disproportionate.

11. The First Respondent submitted that there would have been no point in contacting the individuals because the information that she was seeking about management of the firm would be contained in internal rather than external e-mails. She confirmed that the individuals were still around and that she had not sought witness statements from them. She maintained that she had said from the outset that she wanted information from the hard drives, although she had only asked for her own in her e-mail of 17 September 2012. The First Respondent stated that she did not understand why they had not been labelled in any way. Her practice had only been trading for a matter of months and she did not think that hard drives would contain a vast amount of data and that the task would not be that costly. She submitted that she was in a position where she had no evidence in support of her defence.

12. The Tribunal considered the submissions made by the First Respondent in support of her application for disclosure. Her oral application related to the legal advice that she had received from her solicitor G and to the internal management of Norman Saville & Co, being information which she sought to obtain from her firm's hard drives of the individuals she had identified. It had borne in mind the importance of the First Respondent's right to a fair trial under Article 6 of the European Convention on Human Rights which she had referred to in her earlier written application for an adjournment as a basis for her application for "fair and proper disclosure" in her 20 September e-mail to the Tribunal. In respect of the information which she sought concerning exchanges between herself and G, the Tribunal considered that her application for disclosure was without merit. According to the First Respondent, G was her solicitor and notwithstanding that she said that there was now a bad relationship between them, she nevertheless plainly had a right of access to the files and other papers relating to her and held by him and had had plenty of opportunity to approach him to obtain the originals or copies. The Tribunal considered that it was not incumbent upon the Applicant to obtain information for her that at all material times had lain within her own power and control, and it would also be disproportionate to require it to do so, given the potential volume of information to be searched. The Tribunal further noted that the First Respondent had not relied previously on the suggestion that the information she sought would show her management of the named individuals when she first sought disclosure of the hard

drives and that it was not an explanation for her application raised on 17 July 2012. The Tribunal also noted that these individuals were on her own admission available to her and she even acknowledged that it would have been possible for her to obtain witness statements from them and she had not done so. She had also not (originally) sought disclosure of her own hard drive which would have dealt both with her management of the named individuals and any electronic or paper communications from WS and MC. The Tribunal considered that the whole issue of disclosure had to be dealt with on a proportionate basis. It considered that her request in respect of a search being made of the contents of 36 hard drives was disproportionate and also made too late. She had had adequate and sufficient opportunity herself to obtain the information that she sought and had not done so. In light of the foregoing the application for disclosure was refused.

13. Having regard to the way in which it was proposed that the allegations against the Second Respondent should be disposed of, certain aspects of the proposal made by Mr Dutton for the Applicant presented practical difficulties to the Tribunal. The Second Respondent had made some admissions and sanction in respect of those would need to be addressed. If some allegations were left to lie on file, this would place the Tribunal in a difficult position in arriving at any sanction if such be required. There were also practical issues as to how the matter would be dealt with if the Applicant sought to resurrect those allegations subsequently. Mr Dutton informed the Tribunal that he would not open his case against the Second Respondent in respect of those particular allegations and submitted that any sanction would therefore apply only to the allegations which had been admitted and proceeded with. The Tribunal did not, however, consider that this proposal addressed its problem of determining any sanction in respect of all allegations admitted or found proved either at this hearing or at a subsequent hearing as the allegations arose out of the same factual matrix. The Tribunal therefore invited Mr Dutton to seek instructions from the Applicant about the possibility of it forming a view on the outstanding allegations which the Tribunal had noted Mr Dutton had said in any event it was highly unlikely would ever be pursued by way of proceedings.

14. For the Second Respondent, Ms Hearnden informed the Tribunal that the basis upon which she had suggested to the Applicant that the matter should be disposed of, was that the Second Respondent would admit certain allegations and that the remaining allegations against her should be withdrawn. She submitted that there were then two alternatives; any sanction against the Second Respondent could be dealt with at the conclusion of the proceedings against the First Respondent as part of the same exercise or the case against the Second Respondent could be severed and dealt with separately. On the second day of the hearing, 4 October 2012, Mr Dutton informed the Tribunal that the Applicant had instructed him to seek the consent of the Tribunal to withdraw allegations against the Second Respondent which she had not admitted and to invite the Tribunal to accept her admissions in respect of the others. The Tribunal, having considered the submissions made by Mr Dutton and Ms Hearnden accepted the admissions made by the Second Respondent as follows: allegation 1.1 limited to breach of Rule 1.03 of the Solicitors Code of Conduct 2007 (compromising her independence), allegations 1.2, 1.3, 1.4, 1.5, 1.6 and 1.9. The Tribunal also approved the withdrawal by the Applicant against the Second Respondent of the remainder of allegation 1.1 and allegations 1.7, 1.8 and 1.10 which were not admitted.

15. It was clarified that the First Respondent admitted allegation 1.1 limited to breach of Rule 1.03 of the Solicitors Code of Conduct 2007 relating to compromising independence. She also admitted allegations 1.2, 1.3, 1.4 and 1.5. She denied allegation 1.1 insofar as it related to breach of Rule 1.02 relating to compromising integrity. She also denied allegations 1.6, 1.7, 1.8, 1.9, 1.10, and 1.11.

Factual background

16. The First Respondent was born in 1974 and was admitted in 2006.

17. The Second Respondent was born in 1972 and admitted in 2000.

18. At all material times, the First Respondent was practising as a solicitor in a firm, known as Norman Saville & Co ("the firm") which operated out of offices in Muswell Hill, North London and Birmingham. Initially, the First Respondent was in partnership with NE, but he resigned with effect from 29 March 2010. The Second Respondent became a partner according to the Applicant with effect from 29 April 2010 or according to the Second Respondent from 4 May 2010.

19. An investigation was authorised as a result of information obtained from an investigation into a firm W, as to which there was an intervention by the Applicant. The intervention was resolved on 23 December 2009 and was effected on 24 December 2009. The investigation into W revealed a connection between the internet marketing of W and the internet marketing of the firm and identified certain individuals connected to W, whom the Applicant considered had also been identified as having an interest in the purchase and management of the firm. It was resolved to attend the premises of the firm without notice.

20. On 24 March 2010, Investigation Officers from the Applicant, Ms Alice Evans and Mr David Bailey, attended the London office of the firm to carry out an investigation. At the time, the Applicant's record showed that Ms A and Mr H were partners in the firm. However, Ms Evans and Mr Bailey were informed that the firm had been acquired by the First Respondent and NE and that the firm had also opened a new branch office in Birmingham. As a consequence on the same day, Investigation Managers from the Applicant, Mr Andrew Becconsall and Mr Eric Fletcher, attended the Birmingham office.

21. In the following judgment the term "IOs" is used to refer to staff of the Applicant who participated in the investigation regardless of their particular job title.

22. Enquiries within the Operations department of the Applicant revealed that it had been informed by e-mail on 15 March 2010, that the First Respondent and NE had recently purchased the firm in London and that they intended to open a Birmingham office. The acquisition of the firm from its previous partners had been completed on or about 17 March 2010. The firm was a modestly sized general practice serving the community in Muswell Hill.

23. NE was interviewed at the London office on 24 March 2010 by Ms Evans and Mr Bailey and he subsequently met Ms Evans and Mike Shields another IO on 16 June 2010, when he provided a witness statement. NE informed the IOs and set

out in his witness statement that while the completion of the purchase took place on 17 March 2010, he first attended the firm on 24 March 2010. He met MC and WS after his name had been forwarded to them as a prospective partner in the firm by NI, a partner in the firm of W. NE knew NI as NE had been employed at W as a clerk in what was known as the "Post Completions Department" from September 2009 until early December 2009. He had met MC and WS previously and believed that they were involved in marketing at W. He met with the First Respondent and WS in Birmingham in February 2010, when the business model for the firm was discussed. It was confirmed that the marketing of the firm would be operated by WS and MC and would be similar to that of W, but that compliance with the professional requirements of the Applicant would be paramount at the firm. The firm employed the services of G of G Solicitors to advise on compliance issues. G also advised MC and WS on the purchase of the firm and had been involved in dealing with insurance matters. NE understood that the purchase price for the firm was to be £60,000. His initial understanding was that the First Respondent was to pay £15,000 of the purchase price and that WS would provide the balance of £45,000. He was later informed by G that his understanding might have been wrong and that as a fixed share partner he was not entitled to know the details of how the purchase was funded. He did not know if there was a loan agreement in writing and he was unaware of the terms of the loan. In his statement NE also said that because of his concern about the arrangement, he had sought legal advice and was informed that it was acceptable to be a partner in the firm, even if he did not invest any capital in it. He was however advised not to sign the contract for purchase or the lease for the Birmingham premises. So he did not. He understood his role to be that of a non-fee earning compliance partner, a role he had not previously undertaken. He would receive remuneration of £25,000 per year. He could not provide surnames of any of the staff at the Birmingham office. WS had sat in on the interview for a legal cashier. NE had raised concerns with G on 26 March 2010 relating to the firm trading before all the firm's processes had been compliance approved by G as agreed and was informed by G that WS had to do as he was told by NE and that he G would raise these matters with WS. NE had met with WS and the First Respondent on 29 March 2010, when WS questioned his commitment to the firm and suggested that he, NE consider resigning and on 29 March 2010 he did resign. He gave several reasons for his resignation as follows; the inappropriateness of WS informing him that he had to pay for the time spent with G on 29 March 2010 from his own pocket; feeling that he had no say in what was going on in the firm; WS having too strong an influence over the First Respondent and concern in relation to the commercial viability of the practice because "upfront fees" were to be treated as "agreed fees" rather than money received on account.

24. During the interview with Ms Evans and Mr Bailey on 24 March 2010, NE received a telephone call from a Mr MA, who he said was a solicitor providing legal advice to the firm. After the call, NE said that he had been advised not to speak to them further and that the First Respondent, G and he NE would meet with Ms Evans and Mr Bailey to discuss matters on 26 March 2010.

25. An interview took place with the First Respondent on 24 March 2010, when Mr Becconsall and Mr Fletcher attended the Birmingham office. At the interview, the First Respondent gave the following information; she said that she and NE had previously worked together at W and after it closed they were looking for a new firm

to purchase. They used a consultant, Mr MK whom they knew historically through friends and who was described as a "deal broker" for solicitors. He had introduced them to the partners of the firm in late November 2009. The purchase of the firm was agreed at £60,000 including goodwill, but without any work in progress. The First Respondent and NE were only interested in buying the name of the firm as an alternative to setting up a new firm, because this would give them the benefit of existing indemnity insurance, that is, they could continue to practise with the existing policy and insurance provider and it was the understanding of the IOs that £30,000 was paid to the existing insurance provider soon after the firm was purchased. They also took over the existing client and office bank accounts. The purchase was completed on 17 March 2010. The firm's Birmingham office had no clients as at 24 March 2010. G was to act as the firm's compliance officer. MK was present in the office on 24 March 2010 to deal with matters relating to the lease of the Birmingham office, but had no further involvement. The office was staffed with 10 fee earners and nine legal assistants, mostly former staff of W who were in the office, training. The running costs of the office were to be met by the First Respondent and NE from their own resources. Clients were to be sourced through estate agents, financial consultants and the firm's own website. The Birmingham premises were leased for three years. A business plan had been made but was on a lap top of another named individual and not available on 24 March 2010. There was no financial input from anyone other than NE and the First Respondent. The First Respondent confirmed that no one had loaned her any funds to put into the business.

26. At an interview conducted by IOs with the First Respondent, NE and G on 26 March 2010, a number of questions were put, and G sent a letter to Ms Evans on behalf of the firm dated 6 April 2010.

27. A letter dated 31 March 2010 was received by the Applicant from NE, stating that he had resigned as a partner from the firm with effect from 29 March 2010.

28. On 2 June 2010, Ms Evans met with Mr H and a Mr TG, the former being one of the partners who sold the firm and the latter being a conveyancer who assisted H with the sale of the business. The following information was provided, inter alia at the meeting. Exchange had taken place on 18 December 2009 with completion on 17 March 2010. The firm had been on the market for sale for two or three years. They had been approached in relation to the eventual sale to the First Respondent and NE by MA of Birmingham and he was the principal point of contact throughout the sale and no other solicitors were instructed by the First Respondent and NE. The purchase price was confirmed as £60,000, split as to £11,975 (being the deposit on exchange of contracts, received on 18 December 2009) and £48,025 (being the balance payable on completion), received on 15 March 2010. A further £60,000 was received into the firm's office account, on 16 March 2010, to pay for insurance in the sum of £30,000, and H and TG initially thought that the balance, £30,000 was to be paid for work in progress, but confirmed that the First Respondent and NE in fact did not want to purchase any work in progress. Most files, apart from the files of Ms Varsha Varsani ("VV"), who was to be a witness in these proceedings and was an employee of the firm who remained after the sale, and some of Ms A's matters were taken by the fee earners who left the firm on sale. Ms Evans' note of that meeting included:

> "Mr [H], said his first contact was with Mr [MA], whom he met on his own. Mr [MA] was apparently reluctant to reveal the identity of his clients. Mr [H] made it clear that he was not prepared to continue under those terms, and also in order to protect the firm's conveyancing clients, he was not prepared to sell to a sole practitioner.
>
> Mr [H] said that he subsequently met [the First Respondent], the proposed purchaser. [The First Respondent] indicated at that time (before exchange of contracts) that she had another female solicitor who was going to be her partner. [Mr H and Mr TG], said that Mr [NE] was not mentioned until some way into negotiations.
>
> Mr [H] and Mr [TG] said that they in fact never met Mr [NE], however they believe their bank insisted on meeting both [the First Respondent] and Mr [NE] prior to the sale.
>
> When [Mr H and Ms A] met [the First Respondent], she was accompanied by Mr [MA] and someone she described as her 'partner' and Mr [H] took this to mean her personal partner, rather than a business partner. He was unable to remember the 'partner's' name. It was represented that [the First Respondent] had limited funds, and the purchase was being funded by the 'partner'.
>
> [Mr TG] said that he expressed surprise that [the First Respondent] was interested in purchasing a practice in London, since she was based in Birmingham. He said the answer he was given was that the First Respondent used to live and work in London and wanted to move back. Mr [TG] also said that some time after exchange of contracts, there was an indication that the new owners wanted to open new premises in 'The City'…
>
> [Mr H] said that [Mr WS and Mr MC] attended with [the First Respondent] on the day of completion but he was not introduced to either of them, and has only subsequently learned their names. They were described as 'advisers' or 'consultants'.
>
> Mr [H] could not remember if he had met [Mr WS and Mr MC] before that time. He said that if he did do so, then he had met each of them on no more than two occasions in total…"

29. The following day, 3 June 2010, Barry Cotter Investigation Manager, Chris Norton Senior Investigation Officer and Mark Manning of the Applicant's Fraud and Confidential Intelligence Bureau attended the Birmingham office without notice at 9.30 am accompanied by two officers from West Midlands police. Messrs Becconsall, Praful Parmar and Ken Robinson of the Applicant attended the London office of the firm to continue the investigation. They were accompanied by two officers from the Metropolitan Police force.

30. It was noted that the Birmingham office shared premises with J. Both the firm and J were accessed from the same reception area. J's door had its logo and a printed notice prohibiting non-J employees from entering those offices.

31. Thereafter the investigation continued by correspondence, including the service of a Notice pursuant to section 44B of the Solicitors Act 1974, to which G responded by letter dated 21 June 2010. The investigation into the firm concluded with the preparation of a Forensic Investigation Report ("FI Report") dated 28 June 2010.

32. The Applicant's records showed that prior to their involvement in the firm, in addition to NE, the First and Second Respondents were employed as assistant solicitors at the firm of W: the First Respondent from 1 April 2009 [this date was disputed by the First Respondent who said that she joined W in July 2009] until the intervention on 24 December 2009; the Second Respondent from 19 August 2002 to 27 January 2006. At the time the FI Report was completed, the Applicant's record showed that four assistant solicitors employed by the firm, all in the conveyancing department, had been employed by W. They were DB, AK, SM and SP.

33. The firm's business plan stated that JA, the Practice Manager was a lawyer and the IOs were informed that he had also previously been employed by W. The Applicant's records did not record JA as a solicitor.

34. The First Respondent indicated that the firm's business model was based on an agreed fee system for both conveyancing and immigration work. The model involved the company J, which owned two websites; "UKC" relating to conveyancing and "1SV" relating to immigration work which were used to bring in business via the internet. Promises were made to potential clients over the internet that the firm would either complete a conveyancing transaction or obtain a visa for a fixed fee and, if the conveyance was not completed or the visa was not obtained, the fee would be returned.

35. The business model worked on the basis that fees would be paid in advance using a credit or debit card. Once the fee was taken, the money was paid into the firm's office account. The money in office account was then used to defray overheads and expenses.

36. The FI Report recorded that as at 31 May 2010, and on the basis of figures provided by the firm, the total of fees taken as purported "agreed fees" and paid directly into office account between March 2010 and May 2010 was £431,928.58 inclusive of VAT. The potential shortage on client account as at 31 May 2010 was £175,920.42 based on the premise that there had been a breach of Rule 15 of the SARs.

37. By agreements dated 29 March 2010 and 26 April 2010, the firm entered into outsourcing arrangements with J. Both these outsourcing agreements appeared to have been signed on behalf of the firm by the First Respondent and related to the introduction to the firm of conveyancing and immigration work respectively. According to searches made at Companies House, J was owned by Mr RB, a former employee of W.

38. The First Respondent maintained that J was paid for marketing the firm. Schedule 2 of each of the agreements enabled J to bill the firm up to £100,000 per month. The greater the number of clients referred by J to the firm, the greater the fee payable to J.

39. An analysis of the Birmingham office bank account statements for the period 12 April 2010 to 28 May 2010 showed that office account receipts amounted to £383,501.05. Details of payments made out of office account to J in the period 17 March 2010 to 31 May 2010 amounted to £169,629.60, representing 39% of fees received by the firm, together with various payments made to individuals, including Messrs MC and Hu, both of whom were employees or consultants of J.

40. From completion of the purchase to 15 June 2010, the Respondents paid out to J the total sum of £237,647.02. As a consequence, the Applicant concluded that the firm's business plan was not sustainable because it permitted the firm to dispose of nearly 40% of its income to a referrer of work. Also the business plan did not make any reference to revenue generated by immigration work which was responsible for some 65% of the firm's income, all of which J introduced to the firm.

41. The FI Report recorded that the First Respondent was the managing partner and primarily attended the Birmingham office of the firm, (which she considered to be its head office). She was assisted in the management of that office by JA. The level of instructions at the Birmingham office increased significantly between 30 April 2010 and 31 May 2010 from 274 to 504 conveyancing cases and from 80 to 355 immigration cases.

42. The investigation showed that on 10 November 2009 a loan agreement was entered into between the First Respondent and BC LLP ("BC"), pursuant to which BC made available to the First Respondent a "loan facility" of £250,000 "in connection with the business known as Norman Saville & Co Solicitors…"

43. The accounting records showed that the following funds were received into the firm's London office bank account as follows:

- on 18 December 2009, £11,975 from MTP Ltd ("MTP");
- On 15 March 2010, £48,025 from BC;
- On 15 March 2010, £60,000 from Mr AUS.

44. On 3 June 2010, Mr Cotter requested that the First Respondent provide details of how the funding to purchase the practice was provided. The First Respondent stated that it came from friends, family and a loan company. She also confirmed that she had agreements relating to the funding. Mr Cotter requested full details relating to the providers of funding and her associations with them. The First Respondent requested seven days to produce the information. She said that she was trying to cooperate, but felt intimidated in relation to the no-notice attendance of three of the Applicant's officers and the police. Mr Cotter asked the First Respondent if it was the case that she either did not know who provided the funding or would not tell him. The First Respondent said that she did know, but did not have the information to hand and would revert in seven days and that was as much as she would say.

45. On 3 June 2010 Mr Cotter also asked the First Respondent who MTP was. She enquired from where the information was obtained and she confirmed that £12,000 (£11,975 after deduction of a £25 telegraphic transfer fee) was received into the office bank account from MTP on 18 December 2009. The First Respondent said that MTP

was a company that provided her with a loan. In response to a request made under the Section 44B Notice, the firm responded:

> "These were funds owed by an aunt of [the First Respondent's] husband, Mrs [BN], who sent these funds via MTP in order to repay sums [the First Respondent] had previously loaned to her."

46. Despite being asked, both in the letter dated 4 June 2010, and in the Notice under section 44B dated 11 June 2010, the firm had not given details of the owner of MTP nor of any relationship between the owner of that company and the principals of the firm. Mr Cotter also asked the First Respondent about BC and she said that it was another company that provided her with a loan and added that she was in the process of securing finance to repay these loans. Mr Cotter asked who AUS was and the First Respondent confirmed that he was the owner of BC and that the £60,000 from AUS was a loan.

The London office

47. On 3 June 2010 at the London office, IOs interviewed the Second Respondent. The interview showed that she had been a partner for approximately one month and had a partnership deed with the First Respondent which she had not signed, but the Second Respondent accepted that she was a partner in the firm. She said that she had agreed to be paid £25,000 per annum plus travel expenses for attending the London office for two days per week, Tuesday and Thursday and the Birmingham office for two days per month. She had been introduced to the First Respondent by a mutual friend, whom she met when she (the Second Respondent) had worked at W. She said that she had left W in 2006 and had then worked at another firm and then on her own account and that thereafter she had been looking after her small child so did not work for approximately 18 months prior to the offer to be a partner at the firm. She did not know how much the rent or indemnity premium was, and accepted that she had not looked at the accounts, and that she was not a signatory to the firm's bank accounts.

48. As to WS, the Second Respondent said that she had first met him when she went for her interview in the Birmingham office. She did not know who he was but knew that the First Respondent had a referral agreement with him. When she returned as a partner, she noticed that he had his own office within the Birmingham office, which had a J sign outside. She said that she did not think that he was a solicitor.

49. Ms VV had worked at the firm between October 2008 and the date of sale, undertaking conveyancing work. She was the only fee earner at the London office after the acquisition, and was interviewed by IOs on 26 March and 3 June 2010.

50. The First Respondent informed the IOs that the London office was then billing £6,500 per month, which was from conveyancing work from the one fee earner. She advised them that the office needed to build about £15,000 per month to break even.

51. By a decision of 2 July 2010, it was resolved that grounds for intervention into the firm existed, and in the same decision the Respondents were referred to the Tribunal.

Witnesses

52. VV gave sworn evidence. She confirmed the truthfulness of her statement dated 12 July 2012. Mr Dutton referred her to her witness statement. As far as she could recall the First Respondent had attended the office on 10 February 2010 with three other individuals one of whom had introduced himself to her as "S". She had asked S's full name and he had told her WS. He had asked how many years she had been working as a conveyancer and brief questions about her background. She testified that MC had also attended but she could not remember being introduced to him. She remembered this from speaking to other members of staff and to MA whom other staff had told her was the main contact for the sale of the firm. Mr Dutton also referred the witness to her account of 15 March 2010 when the First Respondent e-mailed and subsequently called her to ask for information about the accounts software, which the firm used, together with panel numbers for mortgage lenders. The witness confirmed that she had felt uncomfortable as she was not a partner and had no idea the firm was being sold until she had been told two weeks previously. She felt that it was inappropriate for the First Respondent to ask for this information, especially as the sale had not been completed. She, the witness, was not happy to divulge passwords and numbers. The witness was then referred to 17 March 2010 when in her statement she had said that the First Respondent had again attended the office with WS, MC and MA. She said that there had been a lot of activity that day. The witness did not know the "ins and outs" of the completion of the sale and purchase of the firm, but said there had been some delay regarding professional indemnity insurance cover. She understood that the First Respondent wanted the sale completed as soon as possible. On 17 March 2010 she had been told that completion had taken place. The staff had been gathered together and the First Respondent said that she and her team would speak to the staff individually. NE had not been there that day. As the witness was the only solicitor being retained by the purchasers she thought that the First Respondent should speak to her personally. However she did not in fact see the First Respondent until she came to say goodbye to the witness, when the First Respondent said matters were, "all up in the air". On 17 March 2010, WS came to see her in her office and asked her to accompany him to a coffee shop, a short walk away, for a meeting. The witness had thought this very strange. During the meeting he had told her about the business model and plans for the Birmingham office. He expected 30 new clients or new matters a month to be introduced. The witness agreed that WS was the first person to mention these plans and First Respondent had not done so. She understood that the Birmingham office had already been set up with lots of staff, and that they wanted the London staff to go and see the office. She was told that it would be quiet in London at first but work would filter through. She was told that rather than being a matrimonial lawyer as she had understood, the First Respondent was a volume conveyancer. The witness confirmed that the firm had not had a volume conveyancing practice, and had charged sometimes four times the fee that WS mentioned. She had told him that she did not think that the proposed fee structure would fit in. Clients were with the firm for years and came to it for the personal touch. The witness had 10 live files as the former owners H and Ms A and the consultant had been allowed to take their files with them. On another occasion, WS said that he expected the witness to bill £15,000 per month. He told her that someone in the Birmingham office was getting work through agents and she could bill that much. He had said that it would not be feasible to keep the London office open if the witness could not do so.

53. The witness testified that after completion of the purchase, the firm had changed its day-to-day management. It had previously been a typical high street firm with no fee structure arrangements with anybody. Things just flowed. Suddenly, she had no idea what was happening. There was a lot of conflicting information. The London office was pretty much deserted. The First Respondent was in Birmingham. In her statement the witness had said that she was concerned, more generally, by the fact that the First Respondent had only been qualified for four years. She had raised issues with the First Respondent and eventually had been informed that if she had any concerns the witness could consult JA. The witness e-mailed him day-to-day to get through transactions. He would get the First Respondent to sign deposit cheques and ensure that they were then posted to the witness. She understood that the firm had been removed from Santander's panel because of difficulties relating to the fact that there were staff in the firm who had previously worked at W. The witness had also searched the internet a week after the sale, for information about WS and MC, and as she said in her statement, identified comments relating to their alleged involvement in W. The stream of information that she found about WS and MC worried her. She had looked up the First Respondent when she heard the practice was being sold. She handed in her notice on 26 March 2010 immediately she realised what had happened at W. However, she was worried about her clients, some of whom were family members so had retracted her resignation, but had intended to go at a moment's notice. She could not put her finger on it, but the firm did not seem to be well run. Ultimately she resigned in June 2010. The witness confirmed that on 22 March 2010, the First Respondent had sent her a new letterhead (by e-mail) and indicated that she would be back in the London office on 24 March. On that day, the witness had been spoken to by Ms Alice Evans, an IO. The witness confirmed that 24 March 2010 was the first time she met NE. He arrived in the office at 11 am.

54. The First Respondent had asked the witness by email on 7 April 2010 if she was prepared to take on the role of principal for the London office:

> "The issue I have at the moment is the bulk of the work will be carried out by the Birmingham office, so most of my time will be spent here. I need to however, ensure that the Muswell Hill office is adequately supervised, so what I am looking for is a principal for that office. I think it would be a great opportunity for you if you choose to take it.
>
> From what I have observed the Office pretty much runs itself but I cant [sic] be in two places at once, what I will do is to pay visit [sic] to the office every week and those days I am not there I would want yourself and [a staff member] in accounts to report to me on a daily basis."

The witness confirmed that she had refused the offer as she had no intention of staying; she had no idea what the plans were for the office.

55. As to what the supervision of the London office had been before 4 May 2010, when the Second Respondent came into the office for the first time, the witness said, referring to the period 17 March 2010 to 4 May 2010 that the First Respondent had sent 'checking e-mails' to ask if everything was okay; she called the person on reception and communicated with the bookkeeper in the office. There would not have

been more than one or two occasions when the First Respondent came into the office during that period.

56. The First Respondent told the witness by e-mail dated 8 April 2010 that the Second Respondent was the new partner:

> "The new partners [sic] name is Farhat Malik-Masud, the SRA will be notified tomorrow and all letterheads and e-mails will need to be amended, I will attend to this first thing from the Birmingham Office."

57. The witness had expressed concern to the First Respondent over the fact that there would not be a partner in the office every day. In her statement she said that the Second Respondent confirmed that she would be coming into the office on Tuesday and Thursday each week, and the First Respondent would come in each Wednesday. The witness confirmed that this was the extent of the supervision at the London office by the First and Second Respondents in terms of their attendance. The witness just got on with dealing with her files. The Second Respondent was trying to manage the London office, but there was not much to manage. All the staff were moved to one floor and the furniture was moved around and that was pretty much it.

58. In her statement, the witness said that in a conversation with another member of staff, the First Respondent referred to WS and MC as "her brains" and also that WS came into the office on three or four occasions following the sale, and it was one of those occasions he had referred to her billing £15,000 a month. WS also told her that he and MC had won a contract which would generate a large number of new instructions for immigration work. He mentioned that online services had been set up to further this and named the two websites. As far as the witness could recall WS was the first person to mention the conveyancing website to her, but the staff had already found out about it from the Internet. The same applied to the immigration website. The witness had spoken to the secretaries and receptionists and they all gauged the impression that MC and WS were pretty much in control. In her statement, the witness said that MC had made a telephone call to her to complain that he had made a mystery call to monitor what secretaries and receptionists were saying to clients who called the London office about work being conducted in Birmingham. He was angry at hearing one secretary telling a test caller that the London office was separate; that they should call the Birmingham office direct and that she did not know anything about the matter. MC had told the witness that the staff should become familiar with the firm's website and what was being done. In her statement she said that she informed MC that secretaries and receptionists had not been given any guidance on what the firm was doing, or on what to say when clients called. [In her statement, the witness went on to say that MC said that he would be monitoring the situation thereafter]. The witness had not thought that MC was a solicitor; he had been introduced as a business adviser. The witness testified that the staff knew nothing about the website and constantly received calls in the London office about Birmingham matters. The witness testified that a lot of post intended for the Birmingham office came to London, which became a sorting office. The witness confirmed that she had taken annual leave between 14 and 25 June 2010, following her interview with the IOs on 3 June and on 30 June e-mailed her resignation.

59. In cross-examination by the First Respondent, the witness confirmed that she had never been to the Birmingham office. And as she was not a partner in the firm, she did not expect to know about future plans. The witness was asked why, when she searched the internet for information about W, she did not speak to the First Respondent. The witness stated that she did not trust any of them from the outset; she had no intention of staying; she did not want to get involved in what they were doing so that she did not ask any questions. In her statement, the witness had said that the Second Respondent did not seem to have much involvement in the decision-making of the firm. She was therefore asked whether she had been privy to any discussions between First and Second Respondents about the practice, and she said that she had not. The witness stated that she simply formed her opinion from things that she asked the First Respondent about the day-to-day running of the London office. When she could not answer she turned to the Second Respondent who would simply say, "Ask the First Respondent". That was why the witness had the impression she had. She had also asked questions about new staff, etc, and the response had been "I'll get back to you." The witness was referred to her statement where she had said that WS indicated to her on the day of completion that he had his own marketing company, and that he and MC would generate lots of business leads. The witness responded that WS seemed to be in control of the business model for the firm. She added that he also mentioned during the interview that he could look into reviewing her salary, and financial package, which led her to believe he had a lot of control over the running of the firm.

60. In cross-examination by Ms Hearnden for the Second Respondent, the witness confirmed that the following events had all taken place before the Second Respondent became involved in the practice; the attendance at the firm's offices on 10 February 2010 of the First Respondent along with approximately three other individuals, and her further attendance on 17 March 2010, when the First Respondent again attended the office with WS, MC and MA, and WS took her for coffee.

61. In respect of 4 May 2010, in her statement, the witness said:

> "On 4 May 2010, [the Second Respondent] came into the office for the first time, together with [the First Respondent] and Mr [WS]."

Based on emails which were put to her, the witness agreed with Ms Hearnden that it was quite possible that the First Respondent had not attended on 4 May 2010, as this had occurred two years ago, and a lot had happened in a short space of time, but there certainly was an occasion when all three people came to the office and also that it was possible that it was not WS who accompanied the Second Respondent, but instead her own husband and child. The witness remembered that the Second Respondent came one day with her daughter, but did not remember her husband coming. As the witness had taken annual leave from the firm from 14 June to 25 June 2010, she agreed that she had worked with the Second Respondent from 4 May to 14 June 2010. The Second Respondent had come in on Tuesday and Thursday mornings for a few hours, and the witness agreed that she did not stay a full day.

62. Mr NE gave sworn evidence. He confirmed that his witness statement was true. In examination in chief he confirmed that he had not signed the sale and purchase agreement for the firm dated 18 December 2009. One of the former owners, H had

written to him, a year later, on the basis that the witness had signed, and H believed, that half of the writing on the signature line was the witness's. The witness also asserted that the signature on the assignment of goodwill document was forged, and not his. The witness testified that he had believed that he was going to be a party to the completion (in March 2010). WS and the First Respondent said they would pick him up in Birmingham and when he got there, they had already left. In respect of WS's involvement with the purchase, the witness said that he thought that WS was engaged on the marketing side. It had been mooted that there might be a partnership agreement after completion took place. G recommended it. The witness said that he had asked G how he could be a partner if he had not signed an agreement. G told him that he would be a fixed share partner and was not entitled to know how the (purchase) money was paid. Nonetheless, the witness already knew as the First Respondent had told him. Before completion, from February 2010 onwards the witness had helped to prepare things like workflows, and between 17 March 2010 and 24 March 2010 went to Birmingham to see the office, which he agreed was established in February and March 2010 ahead of completion. Systems were being set up to take money from clients via the internet on credit cards. The witness testified that at that time he was not aware of J. The lease was taken out and signed in the First Respondent's name. No work was done until 29 March. The first time he had been to the London office was on 24 March. He could never understand why he was not allowed to go there before; he thought perhaps that he had been sent there deliberately because a visit from the Applicant was anticipated. The First Respondent and WS said that he should attend on that day. He had met a woman solicitor and she said that she was resigning. The witness had resigned on 29 March 2010 because he had come in on that Monday morning (29 March 2010) and been ordered into a large office by WS. MC and the First Respondent were also there. It was said that he was not showing proper enthusiasm. On 26 March the previous Friday, he had asked to speak to G as he had concerns. Partly these arose after an incident where he had told staff to shut down the marketing website and WS said he should not do that without his WS's permission. The witness indicated that it had not been approved by G, as agreed. It was also making claims that were not substantiated, and using fake quotes from fake customers. They wished to take money "upfront" from credit cards as an "agreed fee". The witness indicated that this was not the normal way of doing conveyancing business, and it was untested. The witness said that he had expressed his concerns in a meeting with WS, MC and the First Respondent, but was overruled. There were a lot of technical problems. The witness got the impression that WS was really "running the show," and that the First Respondent did everything he told her to. There was never any instance when WS said one thing and she disagreed. It was indicative of his influence that WS and MC had a large room, the boardroom, and the witness and the First Respondent occupied a very small room. The witness thought that WS was happy when he resigned. He had said that if the NE did not do what he said then NE should leave. He confirmed that that was the end of his association with WS, the First Respondent and the firm.

63. In cross-examination by the First Respondent, the witness was referred to his statement, where he said that he was asked to leave W in early December 2009 by NI, and that this was something to do with a dispute between NI and Mr H, the managing partner of W at that time regarding the ownership of W and how W was run. NE indicated that at NI's request he had sent him a copy of his CV. He had understood that NI would purchase another practice, M, in which the witness might be a partner.

The witness had been advised that NI could not put money into M, because his practising certificate was suspended, but NI believed that the suspension might be lifted at some point, and he could then be a partner in M by stepping into the witness's shoes. The witness could not see why the First Respondent should be aware of any discussions that he had had with NI. He said that he had not met the First Respondent at that time, and did not know that she existed.

64. The witness insisted that his knowledge of how the purchase of the firm was funded came from the First Respondent. The witness also maintained that either on Wednesday 24 March 2010 or Friday 26 March 2010 he had overheard G advising the First Respondent to take out mortgages, but to say that she had raised the funds herself. The witness said that he had told his legal adviser about this, and his legal adviser had been shocked. After further questioning, including as to why he had not reported the incident to the Applicant, and why in his statement nothing could be found to suggest that the meeting took place, or that those comments had been made, the witness stated that he could not be sure of the exact wording of what was said. He stated that G had advised the First Respondent to take out mortgages, and he the witness "sort of" inferred that it may have been to explain where the (funding) money came from. G had advised the First Respondent in an honest and straightforward way to take out mortgages.

65. It was put to the witness in cross examination by the First Respondent, that he had not raised with her the issue of marketing having started through the website without the approval of G, and as his partner she should have been advised of this.. The witness responded that he was not a partner at that date; it had occurred before the completion date. It was put to him that notwithstanding his concerns, he still came on board with the firm. The witness replied that he had been there for a week, if that constituted "coming on board". He had taken advice in January 2010, and refused to sign the partnership agreement, and WS said there would be a new agreement, which the witness assumed he would be shown on the date of completion. When the First Respondent had shown him the first sale agreement, it was already dated 18 December 2009. He had been advised that, technically, he was not a partner. He had not spoken to the First Respondent after looking into WS's background, because she was not an expert and instead he spoke to G, who was. The witness had wanted to know whether it was acceptable for an undischarged bankrupt (a reference to WS) to fund the completion. The witness stated that the First Respondent was just WS's puppet. As to why he did not assert his position as a partner, when WS told him to resign, the witness responded that he did not want to carry on, as he knew that WS would just go back to being the way he was. He said that he should have stopped when, two weeks earlier he had looked up WS on the internet. He supposed that he had been stupid to get involved.

66. There was no cross-examination of this witness on behalf of the Second Respondent.

67. Ms Alice Evans gave sworn evidence. The witness confirmed that she was an IO based in the Birmingham office of the Applicant and that she and Mr Bailey had attended the London office of the firm on 24 March 2010. She also confirmed the accuracy of a file note she had made relating to 24 March 2010, and the accuracy of contemporary notes she had taken of an interview with the First Respondent on that date, conducted by Mr Bailey. The witness was asked about her recollection of the

staff at the London office of the firm. She had met the receptionist who seemed somewhat relieved to see the IOs. The witness confirmed notification of the change of ownership had not filtered through to the IOs. They had spoken to Ms VV and staff to find out the situation, but awaited NE's arrival before serving the inspection letters and inspecting documents. The witness confirmed that the First Respondent had not been at the office on 24 March 2010. She also confirmed her notes of the interview with NE on 24 March 2010, including her account of the telephone call, which NE said was from MA, and which NE had received during the interview, and following which he declined to speak further to the IOs on the advice of MA. The witness clarified that NE had provided information before taking the call. The witness said that no notes been made of the 26 March 2010 interview when she had met the First Respondent, NE and G at the London office. They had gone through the general fact-finding pro forma which the IOs used. The witness was then referred to a letter to her from G dated 6 April 2010, regarding the 26 March 2010 meeting. In it the Applicant was advised of NE's resignation. The witness confirmed the meeting with one of the former owners of the firm, H, and with his legal adviser, TG on 2 June 2010, and that she had typed up a note of meeting.

68. This witness was not cross-examined by the First Respondent or on behalf of the Second Respondent.

69. Mr Andrew Becconsall gave sworn evidence. In 2010 he had been employed as an Investigation Manager in the Applicant's investigation unit. He was now a solicitor in private practice defending other solicitors. He confirmed that the accounts were kept separately for each office of the firm, and so he did not have access to the Birmingham accounts, while he was in the London office. He also confirmed the accuracy of the notes of the interview with the First Respondent at the Birmingham office of the firm on 24 March 2010, attached to the FI Report. They had been made in front of the First Respondent by Mr Fletcher, at the time of the interview at which the witness had asked most of the questions. The notes recorded that First Respondent said that she and NE had worked at W as solicitors. When W was closed they were looking for a firm to purchase. They started looking a couple of months before Christmas 2009. They used a consultant MK, who was a "deal broker" with solicitors. The note continued:

> "Knew [MK] through friends, he introduced us to [the firm's] partners in late November 2009, to negotiate a deal at their house – deal £60,000 for the firm, including goodwill but no files. This was just to buy the name – the reason we did this, rather than set up was because of indemnity insurance – an existing firm already has this – we took over the client account and office accounts. The paperwork was completed on 17/3/2009.
>
> We have no clients at the moment. Our consultant [G] (solicitor) will act as our compliance officer.
>
> There is no further involvement of [MK]; he is only here in the office today, dealing with the lease matters.
>
> There are quite a few staff – ex [W]. They are training at the moment. They are salaried – 10 fee earners + 9 legal assistants. Indemnity insurance £5,000

> per month. This, plus the staff and the overheads are funded by myself and [NE] from our accountants…
>
> There has [sic] no financial input from anyone other than myself and [Mr NE] – No-one has loaned me the funds to put into the business"

70. The witness confirmed that it was the First Respondent, who had said that. He testified that he remembered asking this question two or three times as it was important to find out who was behind the operation.

71. The witness's further involvement in the investigation had consisted of attending the London office on 3 June 2010 and on the day of the intervention into the firm. The witness was referred to a letter from Barry Cotter, Investigation Manager dated 4 June 2010, making further enquiries. Under the heading "Loans/Funding" it asked for details relating to funding that came into the firm from MTP on 8 December 2009 in the sum of £11,975 and from BC on 15 March 2010 in the sum of £48,025. The witness was asked had the First Respondent mentioned these items, which had been identified as funding sources, on 24 March 2010 and he replied "No".

72. This witness was not cross-examined by the First Respondent or on behalf of the Second Respondent.

73. Mr Barry Cotter gave sworn evidence. He had been employed by the Applicant until December 2011. In 2010, he had been an Investigation Manager for the Fraud Investigation Department. The witness had become involved in the investigation of the firm in early June 2010. He confirmed that he had been the person with primary responsibility for the FI Report, the accuracy of which he confirmed. He had attended the Birmingham office of the firm without prior notice on 3 June 2010, along with Chris Norton, Investigation Senior, and Mark Manning, of the Fraud and Confidential Intelligence Bureau of the Applicant, accompanied by two police officers. The witness informed the Tribunal that the configuration of the offices had struck him as odd. He had never before seen referrers' offices visible from the reception area of a firm although he had seen them located on different floors of the same building. The accounts were controlled through the Birmingham office and so the witness had access to them.

74. In respect of the witness's letter of 4 June 2010 to the First Respondent, the reason for his writing it was as follows. The First Respondent had not been able to answer his questions on 3 June 2010 because she had a panel issue regarding Santander, and was very busy running the business. The witness confirmed that he had received no response to the letter, including to a request:

> "I noted charges for expedition fees, administration costs. These are fees of the firm. Please explain what these fees and any similar fees pertain to and how clients are advised of them. Please also explain how the fixed fee business model includes such fees."

75. The First Respondent confirmed that G's letter of 21 June 2010 included, in respect of the selection of the firm for purchase:

> "My client made an approach, via her agent, [MA] to [a Mr F], and thence to the vendor partners. My clients were looking for a firm which had the following characteristics:
>
> (i) Compliant;
>
> (ii) No outstanding or major PI or regulatory issues;
>
> (iii) On lending panels;
>
> (iv) In a very good business location; and
>
> (v) The capacity to grow with solid policies and procedures in place.
>
> [The firm] met all of these exacting criteria."

76. Thus, the witness said, the First Respondent had told the witness that MA was her agent. The letter went on to describe the process of exchange and completion, including information about loan funds. It said, omitting the numbering of the letter:

> "£11,975 (£12,000 less charges) from [MTP]
>
> These were funds owed by an aunt of [the First Respondent's] husband [Ms BN], who sent the funds via MTP in order to repay sums [the First Respondent] had previously loaned to her.
>
> £48,025 from [BC]
>
> Please see the agreement with [BC] at tab 3. The members of [BC] are [AUS and ZA].
>
> £60,000 from [AUS]
>
> These funds were sent pursuant to the agreement with [BC] in tab 3."

77. The witness confirmed that prior to the receipt of this letter he had received no such description about the source of funds. He could not explain why AUS was sending BC's funds save that he was a member of BC. The witness's understanding was that all the funds were from BC, even though there was an additional £60,000 from AUS. The witness agreed that in G's letter, payments made by J were referred to, two of which went to MC and one to IH, all at J's request. The letter also responded to questions about the nature of any associations (business and personal between the firm, the First Respondent, or the Second Respondent, and WS, MC and IH as follows:

> "None, save that they all work or provide services to [J]"

78. The witness was asked about having attended with two police officers; he said that they had remained in the reception area while he was investigating, and they were not involved in interviews or interactions with the First Respondent. It was put to him that the First Respondent had told the witness that she was intimidated by the "no notice" investigation of the Applicant, and the attendance of the police. The witness responded that he did not notice that she was intimidated. There were various concerns when investigators arrived at a firm, especially if they came multi-handed; obviously, it put a strain on running the office. The First Respondent was very busy and had to take some telephone calls regarding the situation with Santander.

79. In cross-examination by the First Respondent, when asked why the IOs attended the office a few days after it began trading, and what concerns they had, the witness said that he was not involved in the early stages of the investigation; he had access to information about concerns, including the involvement of non-lawyers from W. As to why he needed to bring two police officers, the witness said that the Applicant's intelligence function carried out health and safety checks. Police attendance had only happened twice in cases that he had been involved with, and he knew of only a few others. The police officers had come into the reception area. The witness and the other two investigators had been given an office to work in. It was put to him that the police officers were directly outside the glass door of the First Respondent's office and he was asked whether he thought it was right and fair to conduct the interview with her under those circumstances. He rejected the suggestion that the police officers were "undercover"; they were not in uniform, and took no part in the investigation, other than as a physical presence. He also confirmed that he had informed the First Respondent that the police officers were present for the safety of the investigators for health and safety purposes. It was not for the witness to say whether the First Respondent had been bullied and intimidated. The witness rejected the suggestion that he and the other investigators should have offered the First Respondent guidance about the business model, or should have told her that they had grave concerns about members of the firm associating with certain individuals, and about the arrangements with J. Forensic investigators were intelligence led, and they looked into the safety of client money and liabilities to clients. Their functions were to ascertain facts and interview people about their findings and then to make a report which would be considered by other staff of the Applicant. The witness stated that it was rare to go into a firm at such an early stage. As to whether they should have told the First Respondent to close the firm, and had allowed it to continue in practice for months, the witness responded that it was not for forensic investigators to do that. If there had been a lesser concern the Applicant might have become involved in a different manner, but a "walk in" investigation reflected the highest level of concern.

80. In re-examination, the witness confirmed that the firm had a client account shortage, which was calculated as a minimum, and which investigators would have expected to grow. This had emerged after three months trading and there was a shortfall because all client monies were placed in office account rather than in client account.

81. The First Respondent gave sworn evidence which is recorded under the relevant allegations below.

Findings of fact and law

82. In arriving at its findings the Tribunal bore in mind the requirements of Articles 6 and 8 of the European Convention on Human Rights.

83. **The allegations against the First Respondent, Kiran Nahar, were as follows:**

Allegation 1.1: She conducted herself in a manner which was likely to compromise her integrity and/or independence, contrary to Rules 1.02 and/or 1.03 of the Solicitors Code of Conduct 2007.

(There was crossover in the submissions and evidence of the parties between allegation 1.1 and allegation 1.9 as they arose out of the same facts.)

Submissions for the Applicant

83.1 For the Applicant, Mr Dutton referred the Tribunal to the facts and submitted that the First Respondent had totally lost her independence, and that the Second Respondent did so partly. Both Respondents admitted their independence was compromised. Mr Dutton also alleged that the First Respondent was in breach of Rule 1.02 relating to integrity. He submitted that:

83.2 The timescale of the agreement to purchase the firm in December 2009 when W was being investigated and shortly to be shut down indicated pre-planning and the involvement of others rather than just the First Respondent. She had no discussions with NE until January 2010. WS and MC had been involved at W, essentially in marketing operations. The bankruptcy report showed WS's address as care of IH at W. As an undischarged bankrupt (until April 2010) at the time the First Respondent entered into the agreement to purchase the firm, he had no business at all in directing a law practice, and it was improper for non-lawyers to be directing and controlling a law firm; it led to breaches of the SARs.

83.3 In respect of the purchase agreement dated 18 December 2009, NE said in his statement that he did not sign it. NE had been used by WS to be a second partner in the firm. According to NE's evidence, WS encouraged his resignation after the first visit from the Applicant. WS would not want a solicitor whose conscience troubled him.

83.4 No doubt the First Respondent wanted work after W had been closed, but her inexperience and her geographical location in Birmingham indicated that there were others behind the acquisition of a firm in London.

83.5 The loan agreement dated 10 December 2009 between the First Respondent and BC provided a facility in the sum of £250,000 in connection with the firm. It was in place before any partnership was entered into by the First Respondent and NE or any agreement for purchase to enable her to have money for the purchase of the firm.

83.6 WS and his associates visited the London office and their behaviour was indicative of their role. On 10 February the First Respondent attended along with three other individuals, one of whom introduced himself to Ms VV as "S", a name by which WS was known. Also present were MC, and MA who acted as some kind of adviser to WS and MC. There was some doubt regarding when precisely WS first arrived and made his presence known, but he did make himself known to Ms VV at some stage and had with him MC and MA. Ms VV recalled that on 17 March 2010, the First Respondent attended the offices in London with WS, MC and MA. There might be some dispute as to whether MA and MC were there, but it was clear that regardless of the precise date, they appeared with the First Respondent.

83.7 There was the phone call during NE's first meeting with the IOs on 24 March 2010 from MA advising NE not to speak further to them which showed that WS, MC and their adviser MA were controlling people at the firm.

83.8 Instead of conducting practice from London, almost immediately an office opened in Birmingham. No properly run practice would establish a branch without the principal

office hearing about it. The Birmingham office acquired some of W's former employees. The London office was largely neglected as the Birmingham office developed. The latter was in the same building as J, which was connected to WS's family. J was the vehicle by which the websites attracted work in volume into the firm.

83.9 WS was transposing the model from W to the firm. It was WS who told Ms VV that the First Respondent's previous practice was in high volume conveyancing and that this was the business model that they were looking to develop for the future of the firm. WS's business model was already well developed and according to Ms VV's evidence did not fit with the way that the firm had been working.

83.10 Being on lender panels was significant for the firm. When NE resigned, it left one principal. The Second Respondent was therefore brought in. Mr Dutton submitted that this was some indication of the importance of panel membership. In the First Respondent's statement she said in respect of MA who had approached her with details of the firm:

> "He said the location was perfect, it was in an affluent area and the practice had over 25 years established a very good reputation. It was also on the panel for most of the major high-street lenders, which was ideal as it was my intention to carry out bulk conveyancing transactions. Finally, it also had the benefit of Indemnity Insurance, which I planned to take over on completion."

83.11 There was the issue of billing rates. Mr Dutton referred the Tribunal to a copy of an e-mail of 7 April 2010 from the First Respondent to Ms VV. As well as suggesting that Ms VV should supervise the London office, it included:

> "Taking into account the overheads for the office and looking at the figures I would be looking for a billing each month of around 15K per month. How feasible is this?"

This was the same rate of billing that WS had mentioned to Ms VV. WS wanted to drive the fee income up from the London office and the figure was unrealistic for a domestic conveyancer in the North London area.

83.12 The nature of the business model supported the allegations. There were two outsourcing agreements with J. They had been signed by RB and the First Respondent. It was submitted that they demonstrated that the firm was in reality being operated as the front for J, which was itself a vehicle for WS, MC and their associates. Schedule 1a to each agreement set out the services which J would provide, including digital marketing and website design. There was also provision in the agreement dated 29 March 2010 relating to conveyancing for J to facilitate:

> "the provision of two additional executive business support consultants seconded to the Customers place of business, whom under contract with the Service Provider shall, subject to this Agreement undertake:
>
> a) Co-ordination and development of an offline sales and marketing campaign to achieve a network of affiliate relationships and

> partnerships with estate agents and other third part [sic] businesses involved in the sale of residential and commercial properties… "

The later agreement dated 26 April 2010 provided for similar services for immigration work and Schedule 1a again related to two additional executive business support consultants who would undertake, this time:

> "A) sales and marketing orientation and advice concerning public relations and client relationship management support services for the purposes of ensuring delivery of efficient client relations and expectations management from point of instruction into the immigration department;
>
> B) quality control management for the purposes of ensuring efficient delivery of services to the customer."

At Schedule 2, the agreements provided for a maximum monthly fee of £100,000 plus VAT payable by the firm, with quarterly reviews and provided for a tolerance of up to 5% over the monthly budget. While RB nominally owned J, in reality it appeared to have been within the ownership or control of the WS family and payments were also being made to MC. J was the recipient of a very significant proportion of the fee income of the firm through the two agreements.

83.13 There were issues concerning the two websites operated by J which supported the allegations. On the conveyancing website there were concerns that:

- The firm was described as celebrating 30 years of legal practice; even if, as asserted by MA it had been in existence for approximately 25 years, it had not practised through the bulk operation website model for that period:

  > "With 30 years of experience, we can provide the ultimate service. We have learnt how to be more efficient, more reliable and faster than your other party's solicitor. We complete faster and guarantee to complete your transaction within the time frame you specify. All that and we are cheaper than your local solicitor too. Call today for your personal quote…"

- Assurances were given about the comprehensive training received by the conveyancing team which in reality operated from a branch office of the firm in Birmingham with people from W, a firm which had been closed down;

- The promise of a refund, which assuredly prevented the firm from taking client money paid up-front as a contingency and putting it into office account.

- The business method for immigration work was similar via the 1SV website and as a result, a large volume of work flowed into the firm in the few months before it was shut down.

- The way the firm was funded indicated the role of WS and his associates and the influence that the First Respondent had allowed them. The First

Respondent had not funded the purchase and this was not a conventionally funded acquisition of the North London practice. The money had come from third parties including AUS, someone who in the Applicant's view was associated with and related to WS. AUS provided £50,000.

83.14 Mr Dutton submitted that the model included very large payments made out the firm's office account to J or J's associates. G's letter of 21 June 2010 sent on behalf of the firm, contained details of the payments out, which broadly accorded with the Applicant's figures. MC had been paid £3,000 allegedly at J's request on 28 April. A further £2,500 was paid on 25 May 2010 to MC. IH had been paid £4,000 at J's request on 13 May 2010. IH was formerly at W. A further £40,000 had been paid to J during the month of June 2010. The sums of money involved in the payments could not be explained by conventional marketing activities. It was impossible to conceive of a viable business plan which permitted a firm of solicitors to dispose of nearly 40% of its income to a referrer of work. Such a disposal was symptomatic of the recipient being the ultimate controller and beneficiary of the firm's income. Also J introduced some 65% of the firm's income. The firm was entirely dependent on J and the work generated through J's websites for its conveyancing and immigration clients.

83.15 Mr Dutton submitted that the First Respondent placed great emphasis on the fact that G, as she asserted, gave her advice. Even if he had advised that what she was doing was lawful and permissible, this was not a defence to a breach of the rules and could only go to mitigation. It was not open to the First Respondent or indeed the Second Respondent to contend that G was giving legal advice, but not to obtain such advice, if it ever existed from G. It was accepted that G was acting for the First Respondent and appeared to be giving advice to NE. Mr Dutton invited the Tribunal to conclude that the evidence that G gave advice was unreliable, and not accept it, and that even if the Tribunal took the view that G had given advice, the First Respondent continued with the firm when she knew that she could not maintain the model.

83.16 Despite the fact that the Applicant first visited the offices of the firm on 24 March 2010, both in London and in Birmingham, the First Respondent continue to operate as the public face of the firm, joined by the Second Respondent after the resignation of NE. IOs visited again on 26 March and on 3 June 2010. The First Respondent continued to operate in the same way until the firm was shut down and against this background, it was submitted that the First Respondent lacked integrity. Mr Dutton submitted that she did not have to be subjectively dishonest to lack integrity, but showed a lack of trustworthiness in the way she operated the firm, particularly as she knew that the Applicant was concerned and was investigating.

<u>Submissions and evidence of the First Respondent</u>

83.17 The First Respondent admitted breach of Rule 1.03 relating to independence. In respect of the breach of Rule 1.02 relating to integrity, the First Respondent submitted that there was nothing in the evidence to show that she lacked integrity, and from her evidence the Tribunal could see that she had sought professional legal advice on a wide range of matters, and that she did so if she was ever in doubt. The evidence also showed that a lot had happened in four months; the IOs arrived a few days after the firm had first opened; there was evidence that she had tried to deal with issues

professionally and honestly, and these were not the actions of someone who was not honest or lacked integrity, nor of someone who simply did not care.

83.18 As to the First Respondent's professional experience she had been involved in conveyancing, including post-qualification, for eight years, and aside from her training contract all the work had been residential conveyancing. The only business, and management experience that she had, was doing the books for a relative's mini-supermarket for three years. She confirmed that MA had put her in touch with H. She had told WS after speaking to MA that she was interested in this particular firm. The First Respondent said she left investigations about the firm to MA; he was brokering the deal for her. When she signed the contract, WS just gave her a lift. As to her intentions regarding the London office, the First Respondent stated that she had done her training contract near Waterloo, and had lived in Guildford for eight years. When she married someone from Birmingham she had gone to live there. She was thinking about whether to return to London. She had so many things going on at that time in Birmingham; she was taking each day as it came. There was some work in the London office. She had spoken to Ms VV and suggested that they could do some networking and she, the First Respondent would see what she could do to bring business to the practice. She had had one of the Birmingham staff who was very good at networking through estate agents and mortgage advisers visit the London office. The First Respondent thought it was appropriate to do bulk conveyancing in a high street practice.

83.19 The First Respondent rejected the suggestion that the operation in the Birmingham office was comparable to that at W, and had been uplifted from W, and re-planted in the firm's Birmingham office. She said that it was not the same business model, but accepted that there were a lot of similarities. She did not know the circumstances surrounding the closure of W. If W had been managed properly, it would still be up and running today. She found out that it had not been managed properly, but it was a sound business generating a lot of work. She wanted her practice to be successful.

83.20 The First Respondent said that when she first approached G, she was a very experienced conveyancer. She was very ambitious and wanted to be her own boss. She had asked G to advise on compliance, and asked that she could leave that responsibility with him. She paid him a lot of money for his advice. She asked him to check the wording on the firm's website and the business model, and asked could the firm operate in that way, and if not, what would he suggest. She was a bit old-fashioned and thought that you should not question a professional giving advice. In many of the law firms where she had worked, she thought that she was doing more than was expected of her in terms of compliance. NE had drafted the client care letter. There were also some trusted friends who helped. She could not afford a case management system, but she created a precedent system with standardised letters.

83.21 As to the large payments to J and the process of billing adopted by J, the First Respondent said that J sent an invoice, and the firm paid it. As to the fact that there was no breakdown on the invoices, and whether the First Respondent understood how J worked, the First Respondent said that J had set up a call centre which they had visited. Part of an invoice dated 31 May 2010, related to "Total marketing & call handling" in the sum of £74,910.44 (out of £135,437.40 plus mark up and VAT); the First Respondent said that she did have conversations with RB, as she was concerned

that the firm was incurring a large percentage of fees with J. She was "not business minded," and was trying to operate a good business, and needed really good guidance. She remembered speaking to G and wanted to make some changes. She had also spoken to JA. Three staff were employed to go out and visit estate agents and mortgage advisers because she thought that they were relying too heavily on J. This took place over the space of four months The invoices before the Tribunal were very substantial and the First Respondent said that she knew the firm could not continue working in that way. In the background, G was keeping up-to-date with what they were doing. He said they needed to find other ways of getting business. The intervention then took place.

83.22 The Tribunal considered the submissions, and all the evidence, including the oral evidence of the witnesses, and the sworn testimony of the First Respondent. She had admitted allegation 1.1 in respect of the breach of Rule 1.03 relating to independence, and the Tribunal found that aspect of allegation 1.1 to have been proved on the evidence to the required standard, that is beyond reasonable doubt. As to Rule 1.02 relating to integrity, the Tribunal found that the venture which she undertook, (the methodology of which was not disputed save for the extent of any influence exercised by third parties), was inherently likely to result in the compromise of her integrity and had done so. It involved serious breaches of the Solicitors Accounts Rules 1998, and also of the Solicitors Code of Conduct, as specified in the findings in respect of other allegations below, and by its very nature placed client funds at risk. The Tribunal found that breach of Rule 1.02 was also proved on the evidence beyond reasonable doubt.

84. **Allegation 1.2: She [the First Respondent] failed to act in the best interests of clients, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 and/or in a way that was likely to diminish the trust the public placed in her and the legal profession, contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.**

84.1 For the Applicant, Mr Dutton relied on the facts concerning the firm's business model and the contents of the FI Report; for other submissions on behalf of the Applicant see allegation 1.1 above.

84.2 The Tribunal considered the submissions and all the evidence including the oral evidence of the witnesses, and the sworn testimony of the First Respondent. The business model adopted by the First Respondent failed to protect the best interests of clients from the moment of their first contact, and included the making of false claims in respect of the experience and expertise of the firm; further client money was placed in office account, and not paid into and retained in client account, as it should have been, and a significant proportion of monies received were then paid away to third parties. All this, the Tribunal considered, was likely to diminish the trust the public placed in the First Respondent and the legal profession. In any event the First Respondent admitted allegation 1.2 and the Tribunal found it proved on the evidence beyond reasonable doubt.

85. **Allegation 1.3: She [the First Respondent] failed to maintain proper books of accounts, contrary to Rule 32 of the Solicitors Accounts Rules 1998.**

85.1 For the Applicant, Mr Dutton relied on the facts concerning the firm's business model and the contents of the FI Report; for other submissions on behalf of the Applicant see allegation 1.1 above.

85.2 The Tribunal considered the submissions and all the evidence, including the oral evidence of the witnesses and the sworn testimony of the First Respondent. The methodology adopted by the First Respondent for dealing with client money received through the two websites inevitably resulted in deficiencies in the maintenance of the books of account. The First Respondent admitted allegation 1.3 and the Tribunal found it proved on the evidence beyond reasonable doubt.

86. **Allegation 1.4: She [the First Respondent] paid, or permitted payment, into office account monies which should have been paid into client account in breach of Rule 15 of the Solicitors Accounts Rules 1998.**

Allegation 1.5: She [the First Respondent] paid directly into office account monies received from clients which the Respondents described as "agreed fees" when in fact they were not so, contrary to Rule 19 of the Solicitors Accounts Rules 1998.

(The judgment records the findings on these allegations together as they arose out of the same facts.)

86.1 For the Applicant, Mr Dutton referred the Tribunal to the FI Report and the firm's business model. Significant quantities of fee income were received by the firm. Rule 19(5) stated that an "agreed fee is one that is fixed and is not a fee that can be varied upwards, nor is it a fee that is dependent on a transaction being completed". The right to the fee in respect of the conveyancing and/or immigration work was contingent, according to the guarantee on the websites, on the successful completion of a conveyancing transaction or the obtaining of a visa. As both types of work would involve payment of disbursements and other administration costs, which could not be determined at the outset, there was no basis on which the Respondents could market, or allow anyone else to market the work being undertaken by the firm as being on an agreed fee basis. The Respondents were, as partners in the firm, responsible for the fees paid by clients at the outset, being improperly paid directly into office account as opposed to being paid into the client account (allegation 1.5). By making payments into the office account, monies could be used to defray office expenditure, or to pay staff, or to pay the Respondents themselves, as well as being used to pay J, or its associates. It was submitted that monies were thereby placed at risk. As at 31 May 2010 on the basis of figures provided by the Respondents (or G on their behalf), the total of fees received as purported "agreed fees" and paid directly into their office account was £431,928.58. In turn, there was a shortage on client account of not less than £175,920.42. Mr Dutton submitted that it was not possible for bills to be submitted at the outset, as opposed to their submission following the completion of a conveyance or following the obtaining of a visa. This was because no work had been undertaken, which could justify a bill being rendered, and the fee might have to be refunded. This in turn meant that on each occasion that such fees were paid into the office account as opposed to the client account, the Respondents were in breach of Rule 15 (allegation 1.4). It was submitted that the result was that by operating or permitting the firm to be operated in this way the First and Second Respondents were

in breach of Rules 15, 19 and 32 of the Solicitors Accounts Rules. (Rule 32 was the basis for allegation 1.3.)

86.2 In respect of monies coming from clients via the websites being paid direct into office account, the First Respondent testified that she was treating the monies from clients from the outset as fixed fees. When an enquiry was received, the client was given a quotation by J. Enquiries came to J and the firm was shown on their website. Enquiries then came to the firm's computer system and JA allocated the cases to fee earners. A bill would be sent from J's office to the client on the day that their credit card number was taken. At the time she was consulting G about the business model.

86.3. The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses, and the sworn testimony of the First Respondent. The methodology adopted by the First Respondent for dealing with client money received through the two websites was in breach of Rule 15 and Rule 19. The First Respondent admitted the allegations and the Tribunal found allegations 1.4 and 1.5 proved on the evidence beyond reasonable doubt.

87. **Allegation 1.6: She [the First Respondent] failed to fulfil her responsibilities with regard to the management of Norman Saville and Co and/or the supervision of the work undertaken contrary to Rule 5 of the Solicitors Code of Conduct 2007.**

87.1. Mr Dutton submitted that the First Respondent denied the allegation, but that her denials were unrealistic. The Second Respondent admitted allegation 2.6 (drafted in the same terms as this allegation). Mr Dutton submitted that as Ms VV's evidence showed, there was no management to speak of in the London office. It had been ignored. All the evidence indicated that after completion of the purchase, chaos ensued. According to the evidence of Ms Evans, the staff seemed to be relieved when the Applicant's IOs arrived; that was very telling. Post for Birmingham would come to London with people not knowing what to do with it. Nothing was known in London about the two websites UKC and 1SV even though the firm's name operated in conjunction with those names. NE first appeared there on 24 March 2010 when the IOs attended, and he did not get there until two hours after they had. The First Respondent was not in the office. Although the Second Respondent came in after 29 April 2010, this was only on two days a week, and the First Respondent was not carrying out any management of the firm at its former principal place of business. Further Mr Dutton submitted that the First Respondent could not and did not manage the Birmingham office. On her own evidence she could not deal with the Applicant's routine enquiries because she was trying to contend with the loss of Santander panel membership. The context in which this had to be viewed was that there were 20 staff and a turnover in four months of nearly £500,000. She was clearly unable to provide supervisory management with the resources she had, and yet she was the only solicitor in the firm who could provide it. JA who was wrongly described as a lawyer, was supposed to be managing the office. The arrival of the Second Respondent did not solve the absence of management. She only came in two days a week in May 2010. Mr Dutton therefore submitted that there was no proper management of the London or the Birmingham offices.

87.2 The First Respondent submitted that she had tried to set out in detail in her evidence the great lengths to which she went, to ensure that the firm was properly managed, and supervised. The Tribunal had heard evidence that revealed a number of serious issues that had emerged during the months that the firm was operating. They had to be dealt with immediately, and they particularly impacted on supervision. She submitted that overall the evidence showed that the practice was managed and supervised adequately. She agreed in cross-examination by Mr Dutton that she was the only person exercising a supervisory role in a firm that, between 17 March 2010 and May 2010, had 20 staff in Birmingham, further staff in London and an income of £431,000. This was because they had grown quickly, and she knew she would have to revise the supervision. Mr Dutton put it to the First Respondent that the business model, described in G's letter of 21 June 2010, as "a strong management team" was in reality a start-up which was almost entirely dependent on the First Respondent for management and supervision. The First Respondent confirmed that she had approved the letter; G would copy her into correspondence. She said that she was not there, and wanted to ensure that there was a strong team; she knew all of them. JA let her know of any concerns that the staff had. In London there was one fee earner and very few files; she had asked Ms VV to liaise with JA regarding correspondence; she had delegated that role because she knew that she, the First Respondent, could not be around all the time. In respect of the firm's business plan, the First Respondent said that it was possible to download a sample business plan from the internet and then amend it. She had initially downloaded it, and put together some of the wording, and told G that she wanted him to have a look at it, and he did that for her. The business plan also referred to "a strong management team/accounts personnel", in respect of which the First Respondent said that the accounts personnel consisted of GS and AM who had worked at W. There was a hierarchy within the management team with the managing partner and then a partner, the practice manager, and below him two team leaders of teams of conveyancers, and each conveyancer had their own legal assistant. It was a mistake to describe JA, the practice manager, as a "young and ambitious lawyer with excellent legal skills" in the business plan, when he was not a solicitor. She was not aware that he had been described in that way. He was very knowledgeable and experienced and one of their best legal assistants, who had been promoted quickly because of his capabilities and management skills. When asked when she read the business plan, she said that it was changing, and on-going, and she did not know if the version which Mr Dutton said had been supplied to the Applicant by the firm, was up-to-date. The First Respondent noted that it had marks all over it, and said that G was looking at it all the time.

87.3 The Tribunal considered the submissions, all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. The Tribunal found Ms VV to be a thoroughly credible witness in respect of both this and other allegations, and rejected the First Respondent's suggestion that it should reject her evidence. Ms VV had testified in a frank, thoughtful and conscientious way. The Tribunal found as a fact that it was plain that the management of the London office of the firm was in chaos and as regards the Birmingham office, it was clear that the First Respondent was unable even to devote her attention properly to dealing with the IOs, as she was openly engaged with other matters. The Tribunal found allegation 1.6 to have been proved beyond reasonable doubt.

88. **Allegation 1.7: She [The First Respondent] entered into agreements with Introducers and, in doing so, has failed to comply with the requirements of Rule 9.02 of the Solicitors Code of Conduct 2007.**

88.1. For the Applicant Mr Dutton submitted that there had been a wholesale breach of Rule 9.02; J and its websites were not just referrers of work; they were the front for the firm to the public. While Mr Dutton accepted that Rule 9.02(a) had been followed in part, in that the referral agreements must be in writing and available for inspection by the Applicant, he submitted that in other aspects the Rule had been breached as follows. Rule 9.02 (b) provided that the introducer must undertake, as part of the agreement, to comply with the provisions of the rule. Rule 9.02 (c) also required that:

> "You must be satisfied that clients referred by the introducer have not been acquired as a result of marketing or publicity or other activities which, if done by a person regulated by the Solicitors Regulation Authority, would be in breach of any of these rules."

Mr Dutton submitted that there was no undertaking by J for the purposes of Rule 9.02(b) or (c). The marketing was in breach of the rules and the First Respondent was too close to the people referring clients. Further Rule 9.02 (d) provided that:

> "the agreement must not include any provision which would:
>
> (i) compromise, infringe or impair any of the duties set out in these rules; or
>
> (ii) allow the introducer to influence or constrain your professional judgement in relation to the advice given to the client."

Mr Dutton submitted that WS and MC influenced the First Respondent's professional judgement. WS especially controlled and influenced professional judgements in the firm. If a person telephoned the call centre or contacted the website, it was WS who monitored the calls – he was the referrer. In addition Rule 9.02 (e) provided that:

> "The agreement must provide that before making a referral the introducer must give the client all relevant information concerning the referral, in particular:
>
> (i) the fact that the introducer has a financial arrangement with you; and
>
> (ii) the amount of any payment to the introducer, which is calculated by reference to that referral; or
>
> (iii) where the introducer is paying you to provide services to the introducer's customers:
>
> (A) the amount the introducer is paying you to provide those services; and
>
> (B) the amount the client is required to pay the introducer."

The Applicant was not satisfied that the introducer was providing clients with the relevant information. Rule 9.02(f) also required:

> "If you have reason to believe that the introducer is breaching any of the terms of the agreement required by this Rule, you must take all reasonable steps to ensure that the breach is remedied. If the introducer continues to breach it, you must terminate the agreement."

There had been no attempt to remedy the breaches because Rule 9.02 was not in the First Respondent's mind at all. Mr Dutton submitted that there was nothing to comply with Rule 9.02 (e) and (f), or (g) which related to providing the client with all relevant and detailed information about the referral. He further submitted that the firm entered into outsourcing agreements with J which, in reality, placed the firm in a position of almost entire dependence upon J, and if the firm had not done so it would not have derived any work at all from J. Mr Dutton reminded the Tribunal that loss of independence was admitted by the First Respondent under allegation 1.1 and submitted that the referrer J and those associated with it had a dominating influence over the practice.

88.2 The First Respondent submitted that the evidence showed that she obtained professional advice about the outsourcing agreements. It was put to her that as at 17 March [completion day] she had no idea if she could pay up to £100,000 per month to J. She responded that that was the way it had operated at W, and that it had operated very well, and she had had people from W join the Birmingham office. Initially she thought it would be viable to pay £200,000 per month to J [on the two agreements] but quickly realised that that was not actually the case. She then tried to get work from other sources and limit the instructions the firm was receiving. She had been on the verge of discussing this with RB. The First Respondent agreed that when she signed the first agreement on 29 March 2010 she realised she was taking a risk, but she had seen this model work very well previously. And they received a lot of work quickly.

88.3 The Tribunal considered the submissions and all the evidence, including the oral evidence of the witnesses, and the sworn testimony of the First Respondent. The Tribunal found as a fact that the outsourcing agreements did not comply with the specific requirements of Rule 9.02 and that allegation 1.7 had therefore been proved on the evidence beyond reasonable doubt.

89. **Allegation 1.8 and 1.11 are reported on together after allegation 1.10 below.**

Allegation 1.9: The First Respondent allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the activities of Norman Saville and Co.

Submissions for the Applicant

89.1 In addition to his submissions in respect of allegation 1.1 above, Mr Dutton submitted that the First Respondent had only qualified in 2006; she was inexperienced in terms of the management of a solicitors' firm. She had been a fee earner at W, and said she did not know the details of how it had operated, so she was likely to need others to advise her, people like WS who appeared to be charismatic and sophisticated. He and MC had prior experience of setting up a high-volume high-turnover operation and of managing it. Mr Dutton submitted that the firm was acquired to give a respectable home to the new practice; it had professional indemnity insurance and a London

address and because of that it appeared to have no association with W. All this fitted with what happened next according to the evidence of Ms VV; after its acquisition the London office was neglected and save for one fee earner was all but abandoned. Mr Dutton submitted that also significant were:

- The evidence of Ms VV in cross-examination; she said that she just did not trust any of them. She had undertaken an internet search which had made her cautious.

- NE's concerns included that WS had too great an influence over the First Respondent and that the website for conveyancing was up and running without the approval of G. He had taken legal advice and did not otherwise enter or sign a partnership agreement. These aspects of his evidence were demonstrably reliable.

- Only the First Respondent signed the sale and purchase agreement for the firm with NE's name shown on it before she spoke to him about becoming partners, MA then sent it out on 10 January 2010 by way of exchange of contracts and somehow MA had obtained NE's name to insert in the agreement. This could have been from the First Respondent or via those associated with WS and J. NE had provided his CV to HI of W. Both NE and WS had worked at W so NE's name came into the purview of those associated with WS even before the First Respondent spoke to him. It was the First Respondent's evidence that NE was not named on the purchase agreement when it was signed on 18 December 2009, but clause 24 was in part above her signature and at the foot of the previous page it contained a reference to the need for NE to have a practising certificate. Mr Dutton submitted that she had made a hopeless attempt to get round that by claiming that NE's name was not there when she signed the document. He submitted that this said a lot about her credibility and indicated that she was used in a disreputable enterprise. During the proceedings Ms Alice Evans filed a supplementary witness statement exhibiting a copy of the final exchanged contract dated 18 December 2009. It came from the sale file provided by TG and H on 2 June 2010. She also exhibited the covering fax from MA's firm to TG which said:

  > "Further to exchange in this matter please find enclosed herewith our client's signed part agreement for your records."

The front page of the Agreement bore a hand written note referring to TG and Formula B and the time, 12.39 pm, together indicating an exchange of contracts. Mr Dutton submitted that it appeared that there was initially a draft sale agreement in which the First Respondent was shown as sole purchaser but that on 2 June 2010 H made it clear that he was not prepared to continue on those terms, and also, in order to protect the firm's conveyancing clients, he was not prepared to sell to a sole practitioner. NE was not mentioned at that point. The draft agreement was annotated, it was believed by TG, "as amended by buyer" and on 14 December 2009 there was a reference to NE as co-purchaser of the practice. The second draft of the agreement was produced including NE's name.

89.2 Mr Dutton submitted that Ms VV had been a palpably honest and reliable witness who always sought to be factually accurate and what she had said to the Tribunal accorded with what she had said in interview to the IOs. He accepted that the Tribunal would be more cautious with regard to the evidence of NE that he had overheard a discussion about mortgages and drew certain inferences from it. Mr Dutton submitted the other aspects of NE's evidence had been plainly truthful and reliable. It was submitted that he was not an essential witness but he provided important background. Mr Dutton submitted that there was clear indication that others were behind the operation of the firm and the Second Respondent acknowledged that reality, in admitting allegation 2.9.

Evidence and submissions of the First Respondent

89.3 In addition to her evidence and submissions in respect of allegation 1.1 above, the First Respondent rejected the suggestion that she knew when working at W in the latter part of 2009 that it was being investigated by the Applicant but agreed that there had been gossip about it. She agreed that WS and MC were involved in marketing at W and that she knew that W was doing internet conveyancing work, but she was just a fee earner, who came in, did her work and left. WS and MC came in and out of the office at W and would talk to the staff. WS was there more than MC was. WS had become a friend from the outset with whom she had social and business relationship. When she started at W in July 2009, he and MC talked about their business and seemed very successful and to know what they were doing. They had also associated with her and others outside the office, for example, having drinks after work. They were not involved in her work. They were part of the sales and marketing project. She did not know whether clients' funds had been properly accounted for at W; she was never a partner in W. She did not feel that she needed to carry out any checks on WS before she set up the Birmingham office; it was her practice. Her understanding was that he was a consultant of J. She had no reason to think that he was a person who would do something wrong. He had attended at the completion of the purchase of the firm for support. The First Respondent said that she was doing business with J and not with WS. She did not know that WS was bankrupt and he did not give her any cause for concern. She had not seen the involvement of WS and MC and that of J at W. WS and MC gave her some moral support and she asked them to come with her to the London office of the firm.

89.4 The First Respondent confirmed that G had been referred to her by WS, who had said that she might be interested in looking at G's credentials. In so far as WS was not a lawyer and was referring her to G, the First Respondent said that WS was not giving her direct instructions. She rejected the suggestion that it was WS's idea that she should consult G; she had found him herself. His credentials showed that he was supposedly an expert in that particular area. After she met him, she was hoping to get him on board. She did not doubt his advice. She compared consulting G with going to the doctor. She had not known that WS was also G's client; that was private and confidential between them. She had been present when WS spoke to G but not regarding any matter but hers. As to why WS would want to be involved in a confidential discussion regarding her matter, the First Respondent said that it was just a general conversation, an informal chat regarding background and what G could offer her. The First Respondent rejected the suggestion that she was trying to play down the key influence that WS had over the firm and that he and MC provided the

business model. She stated that G was advising her about the business model. When she was thinking about the firm, she needed to see that everything was above board; she was not an expert.

89.5 As to how the First Respondent had come across the firm, this was through MA and his agency. He was a solicitor from an organisation based in Birmingham, a sole practitioner. The First Respondent wanted to set up a firm and take a particular group of people with her. WS and MC were present during conversations about it. WS had introduced her to him in that he had said that she might want to speak to MA because he dealt with those types of matters. In respect of whom MA was acting for, the First Respondent or WS, the First Respondent believed that MA was acting for her. He seemed to be on the ball. She had told MA that she did not want to deal with commercial transactions and asked if he could find somewhere [i.e. a firm for her]. She rejected the suggestion that MC and WS were steering her; they were just talking. She met MA and then spoke to her husband. She trusted WS and MC, they were her friends.

89.6 In respect of the sale and purchase agreement, the First Respondent agreed that the document included NE's name but it was a commercial transaction and she had put her trust in MA. She had not had a solicitor acting for her. She agreed that she read the document at some point before she signed it. In response to being asked whether she was aware of NE's name appearing on the document, she maintained that she was the only one that had signed it. She agreed that she needed a partner in order to undertake conveyancing work but she maintained that she was not aware of the conversation when H told MA that he would not sell to a sole practitioner. She did not know that NE's name was mentioned to H. She did not know why MA had said what he had to H at their meeting. She agreed that she had made no reference in her witness statement or in the High Court proceedings relating to the intervention to her present contention that NE's name had been added later. It was put to her that if she had read the document at the time she would have seen that the first page of the document recited that the First Respondent and NE were "the buyers". Under the heading "PRICE", the agreement said:

> "The Price payable by the Buyers to the Sellers shall be the Price in total for the Sale Assets."

The First Respondent said that the document should have had her name and said "Buyer". Mr Dutton had now brought it to her attention. There had been an awful lot of paperwork. The First Respondent stated that NE's name had only been mentioned in the negotiations late on, prior to the sale. She had signed the agreement in her office and given it back to MA who did the formal exchange. In respect of clause 24 of the agreement, which said:

> "This Contract is strictly conditional upon [NE] obtaining from the Law Society a Practising Certificate for the current year and producing a copy of the same to the Sellers prior to which the Buyers will not make any approach to the Insurers and in the event of such copy not been provided within 21 days of the date hereof the Sellers shall be at liberty to rescind this Contract and shall have no further liability to the Buyers hereunder"

the First Respondent stated that she did not know what had happened, and there was nothing more she could say.

89.7 The First Respondent confirmed that the Birmingham branch had been trading on 24 March 2010. She had staff there and was training them. She agreed that the branch might have been trading on the completion date, 17 March 2010. She stated that she had been working on it since January 2010. She agreed that she had needed to lease office premises, purchase computers and acquire desks before the money was received from BC just prior to completion of the purchase. An individual, K, helped her set up the systems. He had provided desks and hard drives and she was going to pay him once the BC funds came in. She had left WS, MC, K and RB of J to set up J's office near reception. The First Respondent stated that she had entered the lease for the Birmingham office and allowed J to have an office there. She discussed it with RB. J's space was leased from a Mr L. The way in which WS and MC were involved was that they were advising her on the London office at the time. They occasionally came into the Birmingham office and went to the London office as well. WS and MC were based at the Birmingham office and monitoring calls to see that they were dealt with properly. As to how they could do this if the calls were about a legal matter, the First Respondent said that WS just looked at how staff took instructions from clients; how they answered calls in terms of greeting. J wanted to make sure that their staff were handling calls properly. The First Respondent had not checked what qualifications WS had to monitor how clients' instructions were being taken on behalf of a law firm.

89.8 The First Respondent rejected the suggestion that if J had not taken part of the building and been operating websites sourcing work, she would never have got the Birmingham office up and running. She stated that J came afterwards; she was still in the process of talking to RB about what his proposals were at the time. It was put to her that MTP was not a conventional lender. She responded that the lender Ms BN was related to her and if she wanted to give the First Respondent money that way, the First Respondent would not question it. She had first come across BC while at W. She had met BC's owners ZA and AUS and signed this agreement and it did not come into her mind that AUS and WS might be related. S was a very common name in the community. AUS had paid the £48,000 personally into office account at her request. Neither WS nor MC had introduced her to BC.

89.9 Regarding the departure of NE, the First Respondent agreed with the following parts of NE's statement:

> "On the morning of that meeting [26 March 2010] I saw Mr [G] alone and sought his advice on matters that were concerning me within the firm… Mr [G] responded that Mr [WS] had to do as I say as I was a partner in the practice and he would raise this with Mr [WS]. I also asked Mr [G] if he was aware that Mr [WS] was an undischarged bankrupt (as I had discovered this from an internet search) and he confirmed that he was aware of this and he did not see this as a problem as Mr [WS] was coming to the end of his bankruptcy period.

> On 29 March 2010 I met [the First Respondent and Mr WS]. At this meeting issues were raised by Mr [WS] as to my commitment to the practice, and he suggested that I may wish to consider resigning."

She indicated they had been having a general conversation that led into work matters. NE was sitting there in quite a bad way (following the IOs' visit). WS asked what was wrong with him and NE had basically said that he had concerns regarding what was going on. The First Respondent said that WS was not giving NE instructions to leave as he was not entitled to do. WS was saying it out of pure frustration; it was a flippant comment. The First Respondent stated that she did not know why NE said that WS had too strong an influence upon her; it was not true. She and WS had conversations about the London office and social matters. He talked to her more than to NE. NE took it to mean that they were conspiring. As to NE's concerns, the First Respondent challenged NE's credibility. The First Respondent said that she did not know why he had said what he said or had done what he had done. NE had not brought his concerns about the internet to her attention and if he was making himself out to be a partner he had had every opportunity to speak to G who was advising them on compliance issues.

89.10 As to whether WS had any business telling Ms VV she should bill £15,000 per month, the First Respondent said that perhaps she agreed that he should not have talked to Ms VV about targets but if he was advising the First Respondent about keeping the business in London open he needed to find out about what work was coming in. It might not be appropriate if non-lawyers were advising, but WS was acting under her direct instructions. As to whether she had told WS to take Ms VV for coffee, and tell her what her targets would be, the First Respondent said that he was merely talking to Ms VV based on instructions that the First Respondent had given him. He could only make suggestions to the First Respondent and it was up to her if she took them on board.

89.11 Having regard to the UKC website, the First Respondent confirmed that it had been approved by G. She looked to G for advice because she knew that in situations like this websites would be scrutinised by the Applicant and she did not have expertise. She told G that she had a lot on her plate, and she was paying him a lot to ensure that the website was compliant. As to particular aspects of the website:

- In respect of the "no completion no fee" promised by the websites, the First Respondent said that she would have looked at it before it went live, but she did not know how quickly or how briefly she did so. She could not recall every single word on the websites. When asked why, if she had read it, it was difficult for her to accept that she knew that the promise had been made, the First Respondent said that she did not know how to answer.

- As to the claim that the firm was "Celebrating 30 Years of legal practice", the First Respondent confirmed that she knew about the firm's 25 as opposed to 30 year history but said that amendments to the websites were on-going, and that at this hearing a lot of things had been noted of which she was not aware. As to claims about the service, when in fact it was only days old and that the firm had no way of knowing if it would be more reliable and faster than other firms, as it was using an untried internet system being installed in the

Birmingham office at the time, the First Respondent said that when people advertised services they would make certain claims. She did not know what to say. If she had known about the claims being made she would have amended the website.

89.12 The First Respondent submitted that nothing in the evidence showed that she had allowed non-solicitors to exercise an inappropriate level of control or influence over the activities of the firm. What had come to light and was shown in the evidence, was that WS and MC were taking it upon themselves to exercise an unusual degree of influence. Apart from the single occasion that the First Respondent was aware of, when WS made the comment (about resigning) to NE, anything they did was under the First Respondent's instructions. If they were doing anything beyond that, it was not with her knowledge or consent. Nothing in the evidence showed that WS or MC introduced BC to the First Respondent, or that AUS was in anyway related to WS. There was nothing to show that J was in any way connected to WS's family. There was nothing in the whole of the evidence to prove any direct communication between the First Respondent and WS and MC. The First Respondent also testified that a lot had come to light during the hearing that she had only found out when presented with the document bundle, for example the conversations that MC and WS were having with staff. When WS had spoken to NE and Ms VV, it seemed that he was acting in a bullying manner. She would have told them to get out if she had known. She should have defined the roles of WS and MC. She could see now that they were making their mark. The First Respondent said that for at least 10 weeks of the four months, WS had been out of the country. WS and MC were not in the office during the IOs' visits. If she had known what she did now, she might not have associated with them. She could see how people would say that MC and WS were "running the show".

89.13 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. The Tribunal arrived at its findings in respect of this and all the allegations based on the evidence before it. As regards W it had heard evidence about W, that it had been intervened into and that proceedings were pending at the Tribunal in respect of it, and that WS and MC had been associated with it. This was not disputed and the First Respondent herself accepted that W had operated a model very similar to the one she employed at the firm, and even that she regarded the W model as a successful and compliant business model. Save only for this general background the Tribunal has had no regard to what may or may not have happened at W, when dealing with the facts of this case, of which it is in any event unaware.

89.14 Turning to the facts of the present case, the Tribunal found that the involvement of J in providing clients to the firm, its proximity to the Birmingham office and the involvement of WS and to a lesser extent of MC in the acquisition and running of the firm pointed inevitably in a way so that the Tribunal could be sure as to the fact that third parties had exercised an unacceptable degree of control over the First Respondent's practice. There was no other credible explanation for their involvement and in particular for the extent of their involvement in the running of the firm. The Tribunal did not accept that they were acting on instructions from the First Respondent or out of disinterested friendship. When, for instance, WS dealt with Ms VV and NE he did so with the authority of somebody who was in charge, not as the representative or personal friend of the First Respondent.

89.15 The Tribunal considered the evidence to be overwhelming. It was inconceivable, or at least highly unlikely so that the Tribunal was sure, that an inexperienced solicitor like the First Respondent, whom it had had the opportunity to assess having heard her give evidence at some length and who was noticeably lacking in any practice management experience, could have set up a sophisticated on-line bulk conveyancing and immigration practice, such as was operated from the Birmingham office adopting, as she did, a model which had already been operated elsewhere in an apparently failed practice, without the control and overbearing influence of somebody like WS and possibly others. Again the financing of the firm suggested third parties were behind it and in control as the First Respondent admitted that neither she nor NE had put any money into the firm and her borrowings were not from everyday orthodox and conventional lending sources. The advisers the First Respondent relied on were not sourced by her, but by others, and the marketing agreements she had with J showed a level of contractual commitment by her firm, which was not just plainly unsustainable but was nothing less than a cascade of practice turnover into the pockets of third parties, who thereby enjoyed de facto control of the practice. In this regard the Tribunal has no doubt that the First Respondent's practice was in effect set up, and/or materially assisted, by third parties, who were not themselves qualified or authorised to own and manage a solicitor's firm, so as to syphon off the turnover of a solicitors' practice into their own hands.

89.16 The Tribunal considered that the timing of the negotiations for the purchase of the firm, and the investigation into W were not coincidental. There were numerous pointers to WS's excessive control and influence over the practice including that many or all of the key players in the acquisition and operation of the firm had been introduced to the First Respondent or she had been pointed in their direction by WS; MA who identified the firm for purchase and negotiated the acquisition, G who acted as the First Respondent's legal adviser in respect of the way the firm operated and RB who nominally directed J's activities.

89.17 WS had attended at completion and also involved himself in the management of the firm for example by suggesting that NE should resign, by becoming involved in a discussion about billing targets with Ms VV, and by monitoring the conduct of incoming calls from clients. The Tribunal rejected the First Respondent's explanation that WS was acting on her instructions; even if he was nominally a consultant to the First Respondent in respect of her consideration of the future of the London office, it was clear that she had allowed him, and that he exercised, a great deal of influence and control over the firm. There was an irresistible inference that he had a commanding role, something which Ms VV and NE plainly recognised and motivated them, at least in part, to forbear having anything to do with the firm to the point of resigning their respective positions in it.

89.18 Furthermore in entering into the two outsourcing agreements with J, the First Respondent had placed herself in thrall to that organisation by agreeing to pay on a monthly basis an amount up to around 40% of the total fee income of the firm. She had adopted a business model that effectively diverted client money via office account to J by a breach of the SARs. The Tribunal had noted that she claimed to be seeking methods of obtaining business other than through J but the practical reality was that WS, and, to a lesser extent MC and J, effectively directed the work of the firm.

89.19 The Tribunal did not consider it necessary to determine the exact involvement of WS in J, or whether WS and AUS were connected or to apportion precisely degrees of influence between the third parties. In any event the relationships were opaque and no doubt deliberately so.

89.20 In respect of the agreement for the sale and purchase of the firm, while noting that the expression "Buyers" was not consistent throughout the document and that the fax sent by MA referred to the expression "our client's" in the singular, the Tribunal found as a fact that it contained a reference to NE at the time the First Respondent signed it. It was inconceivable that it would not have done. And yet it was not disputed that discussions between the First Respondent and NE about a possible partnership between them did not take place until early in the New Year of 2010 after the agreement had been signed. This finding pointed strongly to the fact that it was not the First Respondent, but others who were orchestrating the practice and that in reality she was responding to them as her puppet masters. Even without this, however, there was significant and adequate evidence to prove this allegation.

89.21 The Tribunal found allegation 1.9 to have been proved on the evidence beyond reasonable doubt.

90. **Allegation 1.10: She [the First Respondent] acted recklessly.**

90.1 Mr Dutton submitted that recklessness needed a state of mind knowingly to take the risk of wrong doing and that the First Respondent had been reckless in respect of each allegation whether admitted or not. She must have known that WS and MC were not lawyers and that they were driving the business; she knew that the resources for the business were not coming from her; she knew that WS and MC operated this particular business scheme and she entrusted the running of the Birmingham office to people who had previously worked for a firm which had been intervened. The First Respondent knew, very early on, that she was taking money from clients as an upfront fee and she knew that she was spending up to around 40% of the income by giving it to J. She confirmed in cross-examination that she knew that she would not be able to repay clients on the basis of the guarantee given on the websites, if material numbers of completions or visas did not materialise. She admitted that she knew she had to change the model. There had been no change in the model but a pouring out of money to J until the practice was closed on 5 July 2010 and which was in breach of the SARs and admitted to be such. The First Respondent relied on the advice of G that the fees could be treated as agreed fees. It was NE's evidence that he was concerned that the web pages had not been approved by G before they went live. G could not have approved the UKC website because the statement that the firm was celebrating 30 years of practice was not true; he would also have asked why the firm was associating with UKC which was not a law firm. He would have said that the firm could not use those website pages. Mr Dutton submitted that G had not approved the agreed fee model or its operation via the websites as the Tribunal had seen them. Mr Dutton submitted that the First Respondent did not dispute the Applicant's definition of recklessness which was taken from the case of Regina v G and another [2003] UKHL 50:

> "…it had to be shown that the defendant's state of mind was culpable in that he acted recklessly in respect of a circumstance if he was aware of a risk which did or would exist, or in respect of a result if he was aware of the risk that it would occur, and it was, in the circumstances known to him, unreasonable to take the risk;…"

It was submitted that the First Respondent had knowingly accepted that the firm was taking risks which were unacceptable and she was thereby acting recklessly.

90.2 The First Respondent submitted that recklessness meant someone having no regard to the consequences of his or her actions or not considering the risk. Mr Dutton had alleged that she was reckless regarding the business model. She submitted that there were two important points that the Tribunal needed to be reminded of; first she took professional advice and assistance regarding the business model and followed that advice. Secondly when she realised, within a very short space of time, that the model was not working, she had started to put measures in place to revise the model. In respect of taking the credit card payments upfront from clients and placing these monies into office account, the First Respondent stated that she understood the argument that if clients demanded their money back she would not be able to pay and she accepted that the firm should not have done this, but did not understand why if the Applicant had concerns, the IOs had not raised it. The First Respondent said that she had been acting on advice that she could operate this way. As to her state of mind at the time, she agreed that she knew that all the overheads were being funded from the upfront fees of clients, that she was paying up to 39% of total income to J, but did not think that she was doing anything wrong by continuing, however she agreed that she was worried that if the clients' matters were not completed she would not be able to repay them their fees. That was the reality after four months and she wanted to put things right and make changes.

90.3 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. The Tribunal found that however else matters were viewed, once the Applicant had begun its investigation, the First Respondent knew that there was a significant risk to clients in the fact that monies they had paid might not be repayable but she still proceeded in practice as before. In this regard it was significant that she acknowledged that she had to change the business model. This needed to be done forthwith but she did not do so and the contractual arrangement she had with J probably prevented it. It was no defence that those investigating the firm did not order her to stop or that she might have been taking legal advice. The Tribunal therefore found allegation 1.10 proved on the evidence beyond reasonable doubt.

91. **Allegation 1.8: The First Respondent failed to co-operate with the Solicitors Regulation Authority, contrary to Rule 20.05 of the Solicitors Code of Conduct 2007**

Allegation 1.11: The First Respondent provided misleading and false statements to the Solicitors Regulation Authority and, in doing so, acted dishonestly.

(These allegations are dealt with together as they arose out of the same facts.)

91.1 Mr Dutton submitted that the allegation of failure to cooperate (1.8) and the allegation of dishonesty (1.11) had the same factual base. It was clear that the answer which the First Respondent had given about the funding of the practice on 24 March 2010 was untruthful. The First Respondent said that there had been no financial input from anyone other than herself and NE and that no-one had loaned her the funds to put into the business. In fact NE had put no money in at all. Even if it was true that the MTP money in the amount of £12,000 came from a relative, there was a funding facility of up to £250,000 with BC of which £48,000 was borrowed to secure completion. This was the first time the First Respondent had bought a law firm and it was a very significant transaction for her, even if she operated under the influence of WS and others. Mr Dutton reminded the Tribunal that on 24 March 2010 there had been no police presence at the office. He submitted that Mr Becconsall was not a man to intimidate the First Respondent; he gave his answers (in evidence) in a measured way and had testified that he asked the First Respondent the question about sources of funding [two or] three times because he considered it to be an important matter. In evidence he had said that the First Respondent did not appear to be distressed, although a walk in visit (without notice) was a matter of considerable significance. Her account of why she answered untruthfully varied. In her witness statement she had said that she thought she might be breaking the rules by arranging a loan facility. In her oral evidence she said that she did not feel that the Applicant was entitled to know about her private financial arrangements. Mr Dutton submitted that she could not square those two answers and that she had answered untruthfully because she did not want the Applicant to know that third-party funds had been put into the practice and feared that enquiries might lead to those third parties. In her witness statement she had gone on to say that she wanted to cooperate and had suggested the meeting on 26 March 2010 with G present. She did not refer to the loan arrangements at that meeting. Mr Dutton submitted that if there had been a slip of the mind or she had not wanted to venture into confidential matters, the First Respondent had plenty of time before 26 March 2010 to say that she had given an inaccurate answer two days previously. The IOs then started to look at the books. Mr Cotter's letter of 4 June 2010 enquired about the funding that came into the firm from MTP, BC and AUS. His enquiry compounded the problem created for the First Respondent by her earlier dishonest answer. In respect of her non-cooperation, Mr Dutton submitted that her failure was compounded when having said that she needed seven days, she submitted no answer and a section 44 B notice was issued. It was answered by G's letter of 21 June 2010. In answer to the request, omitting the numbering of the letter:

> "Details of any associations (business and personal) between the firm, [the First Respondent and the Second Respondent] and [WS MC IH]"

she stated through her solicitor:

> "None save that they all work or provide services to [J]."

91.2 Mr Dutton submitted that the First Respondent had admitted that she had given a misleading answer to Mr Becconsall. As to any advice from G, Mr Dutton submitted that it was not understood that he had advised that she make an untruthful statement to the Applicant. The dishonest statement and the failure to cooperate did not go completely together but Mr Dutton submitted that when looked at together in the answer to the IO about funding on 24 March 2010, there had been a failure to

cooperate and the statement was subjectively dishonest. He submitted that the First Respondent was an unreliable witness because she was trying to play down the involvement of WS and MC and the level of influence of J in the practice and she wanted to avoid a finding of proof of the contested allegations and she did not want a finding of dishonesty. Mr Dutton submitted that the disputed allegations were established on the evidence so that the Tribunal could be sure of them to the criminal standard. Evidence of her unreliability as a witness was her conduct in respect of his cross-examination; the First Respondent had repeatedly attempted to find out, beyond what was reasonable, where his questions were going and he had to ask the same question several times over before getting an answer.

91.3 The First Respondent submitted that she did not think the evidence presented to the Tribunal proved that there had been a failure to cooperate with the Applicant. The IOs visited her practice on three separate occasions, one of which she arranged herself. The Applicant had never encountered problems in accessing either of the offices; they could freely access the information they required and speak to whoever they wished. The First Respondent had experienced genuine difficulties at the time and once she had received the section 44B Notice she did respond. The delay had been because she was gathering information and the seven day estimate that she gave was unrealistic but that did not prove that she was not willing to cooperate with the Applicant. It was clear from the evidence that the Applicant was continuously liaising with the firm and vice versa and G was also liaising with the Applicant on her behalf.

91.4 The First Respondent submitted that there was nothing in the evidence to prove that she had acted dishonestly. She was not a dishonest person. She did not set out to mislead the Applicant; she accepted that it was wrong to say what she said to the IOs and she agreed that she should have rectified that as soon as possible. She submitted that the evidence showed that from the outset the Applicant had been very heavy-handed in its approach to her. The Tribunal itself asked if their approach was proportionate. The Tribunal had heard her answers to Mr Dutton's rigorous cross-examination and she asked the Tribunal to bear in mind her character leading up to the intervention. There were no findings against her or previous allegations by the Applicant and so she was less likely to be dishonest. The First Respondent submitted that during the visits by the IOs she had felt very intimidated and absolutely petrified. That had been her state of mind from the beginning of the investigation to the day of the intervention. She was not thinking straight, and the pressure she had been subject to was beyond what any human being could be expected to take. She did not think that the IOs had followed standard procedure. Two IOs had arrived in her office just three days after she had started trading and asked about funding. They had information about WS and W. They were not making themselves clear as to why they had these concerns. The IOs were not upfront and honest with her; she did not understand why they were there in the first place. She had been feeling really intimidated and panicky, but not because she was doing anything wrong. She had said that the funding for the firm came from her. It was like someone asking about her personal finances and not saying why they were asking. She did not think it was the IOs' business. It was her loan and her personal responsibility, as when someone obtained a mortgage on a house; it was their house. She saw it as money that she was going to repay. The firm was hers and she was in control of it. As to having made the statement, did it ever occur to her to correct it; the First Respondent said "No". In her statement dated 14 September 2012 the First Respondent said:

> "It was the first response that popped into my head and I immediately regretted what I had done but felt too ashamed and scared to admit this was not correct. The money was indeed loaned to me but for that split second I thought I may be breaking the rules by arranging a loan facility to assist me in purchasing the practice. I wanted to co-operate fully with the officers and suggested we arrange a meeting on the 26th March 2010 which gave me time to gather the information they required."

The First Respondent said that [concern about breach of the rules] and many other things were going through her mind but she also said that it was not quite like that. She denied that it was any part of her thinking that she was breaking the rules because the IOs were not really saying anything to her; they were just firing a few questions at her. Even a saint in those circumstances would think that they had done something wrong. She rejected the suggestion that she knew that if the Applicant unearthed an association between herself and third parties who were funding the practice it might be very concerned and that she had answered in this way as a result. The First Respondent stated that no third parties were involved in her practice. In respect of the evidence of Mr Becconsall who said that he remembered asking this question two or three times and that she was not particularly nervous or tense, and also that police were not present on this occasion, the First Respondent said that every single visit from the Applicant was traumatising. She could not get her head round why the IOs needed police officers present; she thought that it was because they thought she might harm them. Knowing what she did now about WS she did not blame them. In respect of her response to Mr Cotter on 3 June 2010, when he raised questions regarding the funding and BC and AUS, the First Respondent said that she did not need time to consider but to respond. He had written to her before she could get back in touch. She had realised the timescale was unrealistic. She felt that she was doing the very best under the circumstances to get the information to the Applicant. It had not entered her mind to say at that point (on 3 June) that she had not answered accurately about the funding of the practice and that she could have corrected the answer. She knew the answer was wrong and she was reacting very badly because of the very bad and terrible situation she was in; she had not acted deliberately. The First Respondent wanted to stress that the way that the Applicant had treated her during the investigation was absolutely horrendous. It was the worst experience of her whole life. She wished that the investigators had told her what she needed to do and if she had known about MC and WS, they would have been out of the office that second.

91.5 In respect of allegation 1.8, the Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. In failing to be open and frank with the Applicant over the funding of her practice from the time that she made the untruthful statement on 24 March 2010 until her solicitors wrote on 21 June 2010, the First Respondent failed to cooperate with the Applicant. The First Respondent did not dispute that this had occurred. She had had ample opportunity to provide accurate information to the Applicant in the interim including at a meeting which she herself had fixed with the IOs on 26 March 2010 when her solicitor G was present. The Tribunal found allegation 1.8 to be proved on the evidence beyond reasonable doubt.

91.6 In respect of allegation 1.11, the Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. The Tribunal considered the allegation of dishonesty against the two limbed test in the case of Twinsectra Ltd v Yardley [2002] UKHL 12. The Tribunal considered that in furnishing incorrect information to her regulator, the Applicant, as to the source of funding for her practice, the First Respondent had been dishonest by the standards of reasonable people. In this case the Tribunal considered that the First Respondent was also subjectively dishonest in that the First Respondent realised that by the standards of reasonable and honest people her conduct was dishonest; she had given several different and conflicting explanations including that she immediately regretted what she had said. Despite that it took several weeks for the First Respondent to explain the matter properly in her solicitor's letter of 21 June 2010. As the First Respondent had placed great emphasis on the way she felt during the investigation, the Tribunal wished to make it clear that the IOs each gave evidence credibly and the Tribunal had had no evidence to support the First Respondent's contention that they had been heavy-handed or oppressive in the way that they had carried out the investigation. On the occasion when the First Respondent made the untruthful statement about the source of funding for her practice, the Tribunal had noted that the police officers were not in attendance and even on the occasions when they had been present at the firm, (but not on any occasion within the room where the interviews were taking place), it had been made clear to the First Respondent that the police officers who attended the Birmingham and London offices on 3 June 2010 were there for the protection of the IOs. The Tribunal appreciated that even the most properly conducted investigation by the Applicant, particularly one made without notice, would cause anxiety to a solicitor but this did not constitute a valid defence to an allegation of dishonesty which was properly supported by the evidence as this one was. The Tribunal also wish to make clear that while it had generally found NE's evidence to be reliable, it had taken no account of what he had said about a conversation which he alleged to have taken place between the First Respondent and G concerning her raising mortgages. This was not the subject of any allegation and had played no part in the Tribunal's considerations. The Tribunal found allegation 1.11 to have been proved on the evidence beyond reasonable doubt in satisfaction of both the objective and subjective tests for dishonesty.

92. **The allegations against the Second Respondent, Farhat Malik-Masud as amended at allegation 2.1 were as follows:**

Allegation 2.1: She [the Second Respondent] conducted herself in a manner which was likely to compromise her independence, contrary to Rule 1.03 of the Solicitors Code of Conduct 2007.

92.1 Mr Dutton submitted that while the Second Respondent did not sign a partnership agreement, she allowed herself to be held out as a partner and considered herself a partner. She allowed WS and MC to have a controlling, or strong influence over the firm. It was not suggested that her own influence in the firm was as strong as that of the First Respondent, but she knew of the Birmingham office and visited it once a month; she only attended at the London office two days a week. She allowed matters to continue as they were. It was submitted that her culpability was less serious than that of the First Respondent, but that it was serious and that thereby she had acted in breach of her core duties as a solicitor in respect of compromising her independence

and that she was therefore in breach of Rule 1.03 of the Solicitors Code of Conduct. Mr Dutton also relied on the Second Respondent's admissions.

92.2 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.1 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it was admitted.

93. **Allegation 2.2: She [the Second Respondent] failed to act in the best interests of clients, contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 and/or in a way that was likely to diminish the trust the public placed in her and the legal profession, contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.**

93.1 For the Applicant's submissions see allegation 1.2 above against the First Respondent. Mr Dutton also relied on the Second Respondent's admissions.

93.2 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.2 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it was admitted.

94. **Allegation 2.3: She [the Second Respondent] failed to maintain proper books of accounts, contrary to Rule 32 of the Solicitors Accounts Rules 1998.**

94.1 The Applicant relied on the evidence, his submissions in respect of allegation 1.3 against the First Respondent above and the Second Respondent's admissions.

94.2 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.3 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it had been admitted.

95. **Allegation 2.4: She [the Second Respondent] paid, or permitted payment, into office account monies which should have been paid into client account in breach of Rule 15 of the Solicitors Accounts Rules 1998.**

95.1 The Applicant relied on the evidence, his submissions in respect of allegation 1.4 against the First Respondent above and the Second Respondent's admissions.

95.2 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.4 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it had been admitted.

96. **Allegation 2.5: She [the Second Respondent] paid directly into office account monies received from clients which the Respondents described as "agreed fees" when in fact they were not so, contrary to Rule 19 of the Solicitors Accounts Rules 1998.**

96.1 The Applicant relied on the evidence, his submissions in respect of allegation 1.5 against the First Respondent above and the Second Respondent's admissions.

96.2 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.5 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it had been admitted.

97. **Allegation 2.6: She [the Second Respondent] failed to fulfil her responsibilities with regard to the management of Norman Saville and Co and/or the supervision of the work undertaken contrary to Rules, 5 of the Solicitors Code of Conduct 2007.**

97.1 The Applicant relied on the evidence, his submissions in respect of allegation 1.6 against the First Respondent above and the Second Respondent's admissions.

97.2 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.6 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it had been admitted.

98. **Allegation 2.9: The Second Respondent allowed non-solicitor third parties to exercise an inappropriate level of control and influence over the activities of Norman Saville and Co.**

98.1 The Applicant relied on the evidence, his submissions in respect of allegation 1.9 against the First Respondent above and the Second Respondent's admissions.

98.2 For the Second Respondent, Ms Hearnden submitted that the Second Respondent's admission in respect of allegation 2.9 was in part motivated by what was meant by "allow" in terms of the inappropriate level of control and influence. Her admission was driven by her acceptance that by her presence and role as a partner she facilitated the continuance of the practice and not that she knowingly endorsed the relationship between the First Respondent, MC, WS and J. There had been factual disputes between the Second Respondent and the Applicant regarding her state of knowledge. Ms Hearnden referred Tribunal to the Second Respondent's witness statement dated 22 September 2012, where she accepted on the basis of the witness statements of NE and Ms VV, that WS and MC exercised an unacceptable level of influence and control over the firm. She had set out there that she did not realise it at the time, because she spent only 17 working days in the firm before the intervention and because most of those 17 days were not full days as she worked on a mornings-only basis. This did not provide her with enough time to gain a clear impression of what was happening, particularly in circumstances where she was working in London and the First Respondent and WS were based in Birmingham. The Tribunal was asked to note particularly the circumstances regarding WS and the Second Respondent's interview. The Applicant's evidence came from the evidence of the IOs and particularly an attendance note of an interview with the Second Respondent in the presence of Messrs Becconsall, Parmar and Robinson on 3 June 2010. It included:

> "When [the Second Respondent] interviewed for the job [sic], [WS] was in and out of room, only [the First Respondent] interviewed [the Second Respondent].

98.3 Ms Hearnden submitted that it was quite clear that while WS greeted the Second Respondent for a fleeting second in passing, before going into the kitchen at the office, he did not take any part in the interview and that the Second Respondent's statement and the attendance note should not be taken together to say that WS was there at the interview.

98.4 The Tribunal had considered the submissions and all the evidence including the oral evidence of the witnesses and the sworn testimony of the First Respondent. It found allegation 2.9 to be proved on the evidence against the Second Respondent beyond reasonable doubt, indeed it had been admitted.

Previous disciplinary matters

99. There were no previous disciplinary matters in respect of either the First or Second Respondent.

Mitigation

First Respondent

100. The First Respondent reminded the Tribunal that she had been qualified for four years and had worked in the profession for some years before that. She respected the profession and was passionate about it even as she was going through this experience. She had been proud when she had obtained a training contract and when she had qualified. She acted as a mentor to people who were coming into the profession. They saw the First Respondent as a role model. During the proceedings the First Respondent had seen that there was a split-second moment when she said something which she would regret for the rest of her life. She was a very good, respectful God-fearing person. The fact that she had allowed the untruth to continue did not mean that she was dishonest. In her naiveté, she did not see how she could deal with it. She submitted that a reasonable person would understand why she reacted as she did; the fact that she felt pressured, bullied and intimidated. The First Respondent submitted that when the IOs visited her firm for the second time with the police officers she had felt her whole life flashing before her. She felt that if she had been treated differently by the Applicant she would not be before the Tribunal. She emphasised that the IOs had not given her guidance and wished that they had told her what they knew about the various individuals. She rejected the Applicant's claim that she knew about them. She hoped that the Applicant would "catch the real bad guys". She submitted that she was worthy to be in the profession and did not want a split-second action to cost her career. Her nature was always to give people the benefit of the doubt. She came to things with a clean heart and looked people straight in the eye. She told them her intentions. What had been going on around her had been bad. She was not now interested in going into partnership; she just wanted to be able to practice even if subject to conditions or following suspension for a short period of time. She would go on whatever courses were required. She was glad to have had the opportunity, after two years of suffering, to tell the Tribunal what had happened and finally to give her

version of events. She asked the Tribunal to take into account her testimonials including from Ms BN. The First Respondent submitted that since the intervention her personal life had been affected. She had suffered mentally and psychologically from depression for two years. She had also suffered financially in that she had been declared bankrupt. The Official Receiver was awaiting the outcome of these proceedings, before deciding whether to make an order restricting her financial activities in future. She was unable to secure employment as a solicitor and had become virtually unemployable. She was working as a receptionist. She had worked very hard to become a solicitor and she wanted to be able to continue to practice and to continue with some dignity. The First Respondent thanked the Tribunal for assistance in the proceedings because she had been unrepresented.

Second Respondent

101. On behalf of the Second Respondent, Ms Hearnden handed up a witness statement about her means and a bundle of testimonials. Ms Hearnden questioned the extent to which the Second Respondent had direct control over and responsibility for the circumstances giving rise to the conduct which she had admitted. While accepting her presence and involvement in the firm provided the means by which it could continue, the Second Respondent did not indicate any endorsement or support of the vehicle that she was involved in. She explained in her witness statement that she was coming on board to an existing but fairly new firm and accepted that she did not do the due diligence that she would if she was becoming an equity partner. Ms Hearnden submitted that that was not unusual as she was to be salaried and part-time. She had taken some time to become acclimatised to the ways of working of the firm which again was not unusual. Ms Hearndon submitted that in respect of the SAR breaches the Tribunal had had heard evidence from Mr Becconsall and from the First Respondent, confirming the IT arrangement in the firm which meant that the Second Respondent did not have access to the accounts information in the Birmingham office. In her witness statement the Second Respondent stated that she had asked for the accounts information and she was led to believe that appropriate arrangements were being made. She received a plausible if not entirely satisfactory answer. Up to the point of the intervention she had no access to the accounts. The Second Respondent acknowledged that as a partner she was responsible for breaches that were committed in her name. She did not appreciate the way that the incoming fees were held. She acknowledged that the arrangements at the firm were improper and in breach of the rules but those arrangements were not known to her. Now that the Second Respondent had been presented with the full evidence from the Applicant and understood the true nature of the relationship between J, the firm and the various individuals she readily acknowledged that the influence of the third parties was unacceptable. At the time, the Second Respondent did not appreciate the true character of WS's role and involvement. She regarded him as a brash and overconfident client. She did not say that the extent of that influence was overstated. The attendance note of the Second Respondent's interview with the IOs on 3 June 2010 showed that she made it clear from the outset she was interested in cooperating and would not lie. She had made admissions in September 2012 in her witness statement but there had been considerable negotiation earlier in 2012 in order to seek full disclosure from the Applicant to put the Second Respondent in an informed position. There had also, quite properly, been eleventh hour concessions from the Applicant. Ms Hearndon submitted that from the way the Applicant had presented the case, the Applicant could

see a clear link to what had happened at W. The Second Respondent had an employment history there. However she left in 2006 and had subsequently worked elsewhere. The Second Respondent had not been part of a wholesale relocation of work and a team of people from W. She was not aware of NE's concerns or those of Ms VV. She had not met NE. She had not been involved in the purchase or setup of the firm and did not put any money in. The Second Respondent had begun to work part-time after being out of practice for a while and was still finding her feet. She had worked part of only 17 days at the firm. She was led to believe that she was setting things up for an influx of work. The Tribunal had heard what Ms VV had said about the Second Respondent deferring questions and concerns to the First Respondent. Where the Second Respondent went wrong was in placing her trust in the First Respondent. It was tempting to say that she had behaved naïvely but the profession was built on trust. The First Respondent had behaved consistently throughout in that she was in charge of the work and the way arrangements were being made. The Second Respondent readily admitted breaches but resisted the allegation that her integrity had been compromised by what went on. She had not put money into the firm nor benefited financially. Her only gain had been as an employee with a job to go to after maternity leave. She had been excited and grateful for the opportunity of starting work again in a part-time position. The Second Respondent was trusting but in future would be somewhat more cautious in giving out her trust. She submitted that the testimonials presented a clear picture of someone who professionally and personally acted with integrity in her chosen profession. The Second Respondent had been made bankrupt in 2011 by a former employee of the firm bringing an action under TUPE and the Tribunal was referred to various documents relating to her financial position and state benefits.

Sanction

First Respondent

102. The Tribunal regarded the First Respondent as an inexperienced solicitor who had been hopelessly out of her depth, and therefore vulnerable to manipulation by third parties, which had occurred. In addition she had acted recklessly. As to dishonesty it did not regard her as a generally dishonest person, but as nevertheless dishonest on the facts of this case. The Tribunal was also extremely concerned about the way in which the First Respondent conducted her practice. She had been found guilty of a considerable number of serious allegations, and the situation at her firm, while possibly borne out of naïvety and inexperience, had in itself nevertheless been deplorable and indeed reckless. The First Respondent had set herself up as a principal of a solicitors' practice, but had allowed herself to be placed in a position, where she was controlled by others, and she therefore failed to maintain her independence and to uphold the strict standards of probity required of solicitors. Even apart from the proved allegation of dishonesty the First Respondent was therefore placed at the serious end of the scale in terms of sanction. She had, however compounded her position by persisting in failing to disclose to her statutory regulator the truth about the funding of the practice. This was simply dishonest, in itself a factor likely to lead to the most extreme sanction. Further her dishonesty had been maintained over a period of several weeks, and could not be considered to fall into the category of exceptional circumstances. The Tribunal had taken into account its own Guidance Note on Sanctions, the mitigation which the First Respondent had made and the

testimonials that she had submitted. It accepted that she was in other respects a good person, but having regard, not just to the fact that she had operated her practice recklessly and under the influence of others in a way which consistently placed client funds at risk, thereby putting the public in jeopardy, but also to the finding of dishonesty, the Tribunal considered, that to protect the public and uphold the reputation of the profession, it would be insufficient to impose any lesser sanction than to strike the First Respondent off the Roll of Solicitors, and this was therefore the determination of the Tribunal.

The Second Respondent

103. The Tribunal had considered the position of the Second Respondent; she was a salaried partner who had worked for part of 17 days in the firm over a period of four months. It regarded her as minimally culpable and someone who had paid a very heavy price for her involvement including that she had been made bankrupt. The Tribunal had taken into account its own Guidance Note on Sanctions, the Second Respondent's testimonials and the mitigation made on her behalf. She was largely a victim of the practice which was set up by the First Respondent. She had made admissions and co-operated with the Applicant. The Tribunal considered that the likelihood of any future misconduct was low and the misconduct had in any event consisted of constructive breaches arising out of her role as a salaried partner. The Tribunal considered that her misconduct deserved the lowest level of sanction and the Tribunal ordered that the Second Respondent should be reprimanded.

Costs

104. The Applicant applied for costs in the amount of £87,495.44. All parties agreed that the Tribunal should carry out a summary assessment of the costs. For the Applicant Mr Dutton submitted that the costs were quite high because the Applicant had had to prepare for a full hearing in what was a very serious case. While not the subject of the assessment to give some indication of its gravity the Tribunal noted that the intervention had been complex and would involve costs of around £60,000 and there had been High Court proceedings with costs in the region of £140,000 to £150,000, again not the subject of the assessment. The Tribunal considered the present claim for summary assessment and had regard to the work undertaken and the rates applied and assessed the total amount of costs in this application in the sum of £80,000. Having regard to its view of the relative culpability of the respective Respondents, it ordered that costs should be awarded against the First Respondent in the sum of £70,000 and against the Second Respondent in the sum of £10,000, in both cases having regard to the information before it relating to the Respondents' means the Tribunal ordered that the costs order should not be enforced without its leave.

Statement of full order

105. The Tribunal Ordered that the Respondent, Kiran Nahar, Solicitor, be struck off the Roll of Solicitors and it further Ordered that she do pay the costs of an incidental to this application and enquiry fixed in the sum of £70,000.00, such costs not be forced without leave of the Tribunal.

106. The Tribunal Ordered that the Respondent, Farhat Malik-Masud, Solicitor, be Reprimanded and it further Ordered that she do pay the costs of an incidental to this application and enquiry fixed in the sum of £10,000.00, such costs not be enforced without leave of the Tribunal.

Dated this 29th day of November 2012
On behalf of the Tribunal

D. Potts
Chairman